

**EXHIBITS M-P OF DECLARATION OF NEIL J. OXFORD
IN SUPPORT OF THE MEMORANDUM OF
MOVANTS IN OPPOSITION TO THE MOTION IN LIMINE OF BARCLAYS
CAPITAL INC. FOR AN ORDER EXCLUDING THE EXPERT TESTIMONY OF
DANIEL MCISAAC REGARDING LBI'S OBLIGATIONS UNDER SEC RULES 15c3-1,
15c3-3 AND/OR THE SECURITIES INVESTOR PROTECTION ACT**

EXHIBIT M

1
2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS Case No. 08-13555(JMP)

8 HOLDINGS, INC., et al, (Jointly Administered)

9 Debtors.

10 -----x

11
12 * * *HIGHLY CONFIDENTIAL* * *

13 DEPOSITION OF IAN LOWITT

14 New York, New York

15 August 20, 2009

16
17 Reported by:

18 MARY F. BOWMAN, RPR, CRR

19 JOB NO. 24043
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Page 2	Page 3
<p>1 2 3 4 5 August 20, 2009 6 9:31 a.m. 7 8 9 Deposition of IAN LOWITT, held at 10 the offices of Jones Day, LLP, 222 East 41st 11 Street, New York, New York, before Mary F. 12 Bowman, a Registered Professional Reporter, 13 Certified Realtime Reporter, and Notary Public 14 of the State of New York. 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 2 APPEARANCES: 3 JONES DAY, LLP 4 Attorneys for Lehman Brothers, Inc. 5 222 East 41st Street 6 New York, New York 10017-6702 7 BY: ROBERT GAFFEY, ESQ. 8 BRIDGET CRAWFORD, ESQ. 9 10 BOIES, SCHILLER & FLEXNER, LLP 11 Attorneys for Barclays and The Witness 12 5301 Wisconsin Avenue, NW - Suite 800 13 Washington, DC 20015 14 BY: HAMISH HUME, ESQ. 15 16 WILLKIE FARR & GALLAGHER, LLP 17 Attorneys for the Witness 18 1875 K Street NW 19 Washington DC 20006-1238 20 BY: RICHARD D. BERNSTEIN, ESQ. 21 KELLY M. HNATT, ESQ. 22 23 24 25</p>
Page 4	Page 5
<p>1 2 APPEARANCES: 3 QUINN, EMANUEL, URQUHART, OLIVER & HEDGES, LLP 4 Attorneys for the Creditors Committee 5 865 Figueroa Street, 10th Floor 6 Los Angeles, CA 90017 7 BY: ERICA P. TAGGART, ESQ. 8 9 JENNER & BLOCK, LLC 10 Attorneys for the Examiner 11 330 N. Wabash Avenue 12 Chicago, Illinois 60611-7603 13 BY: ROBERT L. BYMAN, ESQ. 14 15 HUGHES, HUBBARD & REED, LLP 16 Attorneys for the SIPA Trustee 17 One Battery Park Plaza 18 New York, New York 10004-1482 19 BY: NEIL J. OXFORD, ESQ. 20 JOHN F. WOOD, ESQ. 21 22 Also Present: 23 THOMAS E. HOMMEL, ESQ. 24 Lehman Brothers Holdings 25 PHILIP E. KRUSE, Alvarez & Marsal</p>	<p>1 2 3 4 5 IT IS HEREBY STIPULATED AND AGREED, by 6 and between the attorneys for the respective 7 parties herein, that filing and sealing be 8 and the same are hereby waived. 9 IT IS FURTHER STIPULATED AND AGREED 10 that all objections, except as to the form 11 of the question, shall be reserved to the 12 time of the trial. 13 14 15 IT IS FURTHER STIPULATED AND AGREED 16 that the within deposition may be sworn to 17 and signed before any officer authorized to 18 administer an oath, with the same force and 19 effect as if signed and sworn to before the 20 Court. 21 22 23 24 25</p>

1 LOWITT - HIGHLY CONFIDENTIAL
2 IAN LOWITT,
3 called as a witness by the parties,
4 having been duly sworn, testified as
5 follows:
6 EXAMINATION BY
7 MR. GAFFEY:
8 Q. Good morning, Mr. Lowitt. My name is
9 Bob Gaffey. We met briefly before. I am with
10 Jones Day. We're special counsel to the estate of
11 Lehman Brothers Holdings, Inc., and as you
12 probably know, we are looking into issues arising
13 from the transaction in September of 2008 wherein
14 Barclays purchased certain assets of Lehman.
15 I should say to start, I have had a
16 request from my friends at the bottom of the table
17 who have been with us the last couple of days to
18 keep my voice up so they can hear, and I am going
19 to ask you to do the same thing.
20 Have you had your deposition taken
21 before?
22 A. I have not.
23 Q. Just a couple of ground rules. One,
24 try and keep your voice up for everybody. Two,
25 please give me audible answers. The court

1 LOWITT - HIGHLY CONFIDENTIAL
2 and did a PPE, philosophy, politics and economics,
3 and then I did a graduate degree in economics at
4 Oxford.
5 Q. What college at Oxford?
6 A. I was at Merton College.
7 Q. After you took your second degree at
8 Oxford, is that the end of your education?
9 A. That is the end of my education.
10 Q. Do you keep any professional licenses?
11 A. I do not.
12 Q. Have you ever? Series 7, series 23,
13 anything like that?
14 A. No.
15 Q. Now, you currently are employed as the
16 chief operating officer of Barclays Wealth
17 Americas; is that correct?
18 A. That is correct.
19 Q. How long have you held that position?
20 A. Since April of this year.
21 Q. And when did you first start work for
22 Barclays?
23 A. I joined Barclays I guess the Monday
24 that the deal closed.
25 Q. That would be September 22nd?

1 LOWITT - HIGHLY CONFIDENTIAL
2 reporter can't take down a nod or a shake of the
3 head. So for the sake of a clear record, please
4 try to do that.
5 If you need a break at any time, say
6 so. If there is a question pending and there is
7 not an issue about whether there's a privilege
8 applying to the question, what I would ask is for
9 an answer to that, and then if you need to, you
10 can step out into the hall and we will take a
11 short break.
12 A. Okay. Thank you.
13 Q. Can you give me a description,
14 Mr. Lowitt, of your education after secondary
15 school?
16 A. I attended the University of
17 Witwatersrand in South Africa, in Johannesburg.
18 MR. BYMAN: I cannot hear you at all.
19 Can you speak up.
20 A. I attended the University of
21 Witwatersrand in Johannesburg, South Africa, did
22 an undergraduate degree in electrical engineering,
23 and then I did a Master's degree in electrical
24 engineering.
25 And then I went to Oxford in England

1 LOWITT - HIGHLY CONFIDENTIAL
2 A. I believe that's correct.
3 MR. GAFFEY: Off the record for a
4 second.
5 (Off-the-record discussion)
6 Q. What was your position when you first
7 joined Barclays on September 22nd?
8 A. I didn't have a position on the day
9 that I joined Barclays on September 22nd, but
10 within a few days, I was appointed as the director
11 of integration for the Lehman businesses.
12 Q. And what were your duties as director
13 of integration?
14 A. To work with Barclays on integrating
15 the Lehman businesses into the Barclays
16 infrastructure.
17 Q. Is that the position you held until
18 April when you took your current position as head
19 of Barclays Wealth?
20 A. That's correct.
21 Q. And prior to taking up employment with
22 Barclays, you were employed by Lehman, correct?
23 A. That is correct.
24 Q. Do you know which entity within the
25 Lehman family you were employed by?

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A. I don't know with certainty. I believe it was LBI, but I don't know with certainty.

Q. As I understand it, you began work at Lehman in about 1994 as head of corporate development?

A. That is correct.

Q. Was that head of corporate development at Lehman Brothers Holdings, Inc.? Do you recall that?

A. I know that my position was head of corporate development. I can't be clear on whether it was the holding company that employed me or LBI. It is not a distinction that I would have noted at that time.

Q. And you served as treasurer and global head of tax from 2000 to 2005, correct?

A. That is correct.

Q. And from July of 2005 until October of 2006, you acted as chief administrative officer of LBHI Europe; is that correct?

A. I was the chief administrative officer for the European business. I don't know whether that was holdings or LBIE, but that was my

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you responsible to insure that the books and records of the corporation were kept accurately?

A. Maintaining the accuracy of the books and records was the responsibility of the -- a lot of people in the finance department, and it included myself.

Q. Well, it included yourself but ultimately reported up to yourself, correct?

A. Correct.

Q. You were the man in charge of that operation?

A. I was in charge of that.

Q. Now, there came a time in September of 2008, Mr. Lowitt, did there not, when Lehman engaged in discussions with Barclays about a potential acquisition of Lehman by Barclays? Is that correct?

A. That is correct.

Q. And to your knowledge, when did those discussions first take place?

A. I believe there were discussions that began on the Friday before the bankruptcy filing on the Sunday. I wasn't party to those discussions, but I believe that there was contact

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position.

Q. And after you -- did you take on a position after you acted as chief administrative officer?

A. Yes, I did.

Q. What position was that?

A. I was the co-global CAO for Lehman.

Q. How long were you the co-global CAO for Lehman?

A. From when I returned from London, which I recall as being January 2007, through my employment with Barclays.

Q. And then in or around June of 2008 -- did you leave Lehman at any time?

A. I did not.

Q. In or around June of 2008, you became chief financial officer, correct?

A. That is correct.

Q. And what were your duties as chief financial officer?

A. I needed to run the finance department, the product control, the financial control, tax and treasury.

Q. And within those responsibilities were

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between people at Lehman and people at Barclays from that point.

Q. And although you were not involved in the discussions in those -- that period before the bankruptcy, did you play any role or have any involvement in activities related to those discussions?

A. There was some due diligence work that was done on the Friday. I didn't participate in those meetings but I was aware that it had taken place.

Q. Was any of the due diligence work being done under your supervision or were you responsible for any part of it?

A. There were -- the people who were meeting with the folks at Barclays were people who reported to me.

Q. Who were those people who were meeting with Barclays? Again I am still in the period before the bankruptcy filing.

A. My recollection is Martin Kelly met with some of his counterparties at Barclays.

Q. As CFO of Lehman, to whom did you report?

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A. I reported to Bart McDade, who was the president of Lehman Brothers.

Q. Did you have one or more persons who were direct reports to you?

A. I did.

Q. Who were your direct reports?

A. Well, I had direct reports within the finance organization, which included Jerry Reilly, who was the product controller; Martin Kelly, who was the financial controller; Paolo Tonucci, who was the treasurer of the firm; John DeRosa, who was the head of tax, in addition to others.

And then I had reports which I maintained through my CAO role which included the other head of IT, which was Bridget O'Connor, and the head of operations, which was Alastair Blackwell. It also included Bob Lieberberg, who ran expense management for us, and others.

MR. BYMAN: I hate to be a pest, but your voice does drop. It is difficult to hear you. I don't want to ask the reporter to repeat things which will make double your agony, so --

THE WITNESS: I will try. I

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A. I understood from Bart that Barclays were interested in potentially transacting an acquisition of some of the assets of LBI and buying the businesses that were in LBI or some subset of those businesses, and that the details would be worked out over the course of the next day.

Q. And how did you gain that understanding? Did you speak to Bart McDade?

A. I did speak with Bart.

Q. Did he tell you anything else that you can remember now about that initial contact with Barclays and Lehman?

A. He also shared with me that there were eight individuals that Barclays deemed as critical to the transaction, and that I was one of those eight individuals.

Q. Who were the other seven?

A. The other seven, to the best of my recollection, was Mike Gelband, Eric Felder, Ajay Nagpal, Tom Humphrey, Hyung Lee, myself.

Q. Is Skip McGee the last one?

A. Skip McGee. And I -- Bart indicated to me that he was not going to be part of that

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apologize.

BY MR. GAFFEY:

Q. I won't think you're yelling at me if you keep your voice up.

Now, the discussions between Lehman and Barclays that were taking place prior to the filing of the bankruptcy, as I understand it, sir, did not result in an agreement between the two entities. Is that your understanding as well?

A. That is my understanding.

Q. And to your knowledge, did discussions at some point resume between Barclays and Lehman?

A. Yes, they did.

Q. And when did that occur?

A. I believe that Bart McDade was in contact with folks at Barclays on the Monday morning after the filing for bankruptcy.

Q. That would be September 15?

A. I -- if that was --

Q. OK.

A. If that was the Monday, September 15.

Q. And tell me what you know about the contact Mr. McDade had with folks at Barclays beginning on Monday the 15th.

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group of eight.

Q. What did Mr. McDade tell you about not being part of the group of eight, best you recall?

A. Nothing beyond that.

Q. Did you understand him to be saying he wasn't going to work at Barclays after the transaction or he wasn't one of the eight that Barclays considered to be critical to the deal?

A. He just indicated that he wasn't part of the eight.

Q. Now, did there come a time when you began to negotiate or -- withdrawn.

Did there come a time when you began to discuss with Barclays the terms and conditions upon which you would be employed at Barclays after the transaction?

A. I met with Rich Richie at some point on early Tuesday morning.

Q. And tell me about your meeting with Mr. Richie. What did you say? What did he say?

A. To the best of my recollection, he indicated that they wanted me to be part of the transaction, that having me be part of their organization was important. And he shared with me

1 LOWITT - HIGHLY CONFIDENTIAL
2 the terms that they would be extending to me.

3 **Q. What terms did he share with you that**
4 **they would be extending to you?**

5 A. The terms were that a payment in
6 February, 2009, which was equal to 80 percent of
7 my 2007 compensation, and two additional special
8 payments to be paid at one-year anniversaries of
9 the deal closing, which were each equal to
10 25 percent of my 2007 compensation.

11 **Q. How much was that in dollar amount,**
12 **the 80 percent of your 2000 comp?**

13 A. \$6 million.

14 MR. BERNSTEIN: Again, we as
15 Mr. Lowitt's counsel will want to be part of
16 the process, and I understand from last time
17 we had a right to be part of the process in
18 terms of maintaining the highly confidential
19 designation for this deposition and
20 particularly for any discussion about his
21 compensation.

22 MR. GAFFEY: Richard, if you mean by
23 maintaining the highly confidential
24 designation it is bound by the
25 confidentiality order and our agreement that

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2 everything in the depositions is highly
3 confidential until designations come and
4 some period after that, then I agree.

5 I am not waiving any rights we have
6 under the confidentiality order to go back
7 and say we don't think it is highly
8 confidential and to take it to the Court if
9 we need to.

10 MR. BERNSTEIN: I didn't think you
11 were.

12 MR. GAFFEY: I just wanted to make it
13 clear.

14 **Q. And the two special -- I don't know if**
15 **you called it -- the two payments you described,**
16 **one on your first anniversary and one on your**
17 **second, what are the amounts of those, sir?**

18 A. It is 25 percent of the 7.5. I think
19 it is 1.875. but I may have those numbers slightly
20 wrong.

21 **Q. Did you at some point enter into a**
22 **written agreement with Barclays concerning the**
23 **terms and conditions of your employment by**
24 **Barclays?**

25 A. I did.

1 LOWITT - HIGHLY CONFIDENTIAL

2 **Q. About when did you do that?**

3 A. I think I did that on the Thursday
4 evening.

5 **Q. By the Thursday evening, you are**
6 **talking about the Thursday after the bankruptcy**
7 **filing on the 15th?**

8 A. Correct.

9 **Q. That would be September 18th?**

10 A. If that's the Thursday.

11 **Q. While we are looking for an exhibit**
12 **that I want to mark, Mr. Lowitt, was there any**
13 **back and forth between you and Barclays about the**
14 **financial terms of your employment?**

15 A. No.

16 **Q. And when did you -- did they send a**
17 **draft contract at some point?**

18 A. They did.

19 **Q. How was that delivered to you?**

20 A. I believe it was delivered to me by
21 Anthony Collerton.

22 **Q. And Anthony Collerton was I think head**
23 **of HR at Lehman or in HR at Lehman?**

24 A. He was in HR in Lehman.

25 **Q. It was delivered to you by hard copy,**

1 LOWITT - HIGHLY CONFIDENTIAL
2 **not by e-mail, not by electronic means?**

3 A. Correct. To the best of my
4 recollection. It may have been sent to me in
5 addition in soft copy, but I did have a hard copy.

6 **Q. Do you know when any of the other**
7 **seven people that you named signed their contracts**
8 **with Barclays?**

9 A. I don't know when anybody else signed.
10 My understanding was that a condition of the
11 transaction proceeding was that the seven sign
12 their contract.

13 **Q. It was your understanding that the**
14 **seven had to sign their contracts before the**
15 **transaction closed?**

16 A. That it was a condition of closing,
17 was at least my understanding.

18 **Q. And from whom did you obtain that**
19 **understanding?**

20 A. I don't have a specific recollection
21 of where I heard that.

22 **Q. Do you have any general recollection**
23 **about that?**

24 A. No, I -- I don't know specific -- I
25 have no recollection of how I got that.

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Q. Were you -- in the week between the filing of the bankruptcy on the 15th and the closing of the transaction on the 22nd, did you have any involvement in either negotiating or implementing the terms of the agreement?

A. I didn't have a role in negotiating the transaction. And I guess I'm not sure what you mean by implementing the transaction. I certainly played a role in providing information to those folks who were doing the negotiation.

Q. Were you kept apprised by Mr. McDade of the state of negotiations through the week? And by the week, I mean between the 15th and the 22nd.

A. Not in any formal way. There may have been elements that he shared with me, but I don't -- I was -- it wasn't part of -- he wasn't keeping me regularly updated on that.

Q. Was one of your responsibilities during that week to identify assets that would be transferred from Lehman to Barclays?

A. That is an exercise that I was involved with towards the end of that week.

Q. When towards the end of the week?

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happened to Lehman and worried about their futures; and then supporting, you know, specific requests, you know, from Bart and others.

Q. Who were the others in addition to Bart that you just referred to?

A. Well, the other people who were involved with the negotiation were Mark Shapiro, Mark Schaefer. Skip McGee I think was involved in some of the questions and issues, and I think Steve Berkenfeld was providing, you know, legal advice. There may have been others.

Q. What were the nature of the funding issues that you said were a focus of your activities during that week?

A. Well, clearly there was very substantial market disruption following the Lehman bankruptcy filing. Clearly, there was, you know, a great deal of fear in the marketplace with secured funders, and there was concern about, you know, LBI, and so we had people not rolling their secured funding and we needed to find other ways to fund the firm.

Initially, we were utilizing the Fed, but on Wednesday became involved, together with

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Tell me on what day that began.

A. I can't be more precise. I believe it was on the Friday, the 19th, after the repo transaction had taken place.

Q. And prior to Friday, the 19th, did you have any involvement in the activities surrounding the transaction?

MR. BERNSTEIN: Objection, vague and ambiguous.

But you can answer.

A. Yeah, I'm -- I'm not sure what you are getting at.

Q. Let me try and rephrase it.

As a general matter, and I'll obviously follow up on this, I am trying to get an idea, Mr. Lowitt, of what you were doing during that week. Could you sort of take me through the week and give me a general idea of what your activities were?

A. The focus for me during that week was a combination of dealing with funding issues, which were quite extreme; dealing with personnel issues with a number of people in the organization, very disconcerted with what had

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folks at Barclays, in arranging for the Fed to be taken out of their repo position with LBI and to have that repo replaced with one with Barclays.

Q. And was what you were doing in connection with -- actually, let me just follow up on a phrasing. When you say rolling the funding, in layman's terms, does that mean not continuing the next day?

A. Correct. People were canceling their repo trades and returning the collateral for cash.

Q. When you were dealing with Barclays with respect to the repurchase transaction, and again that is something we will talk about in more detail today, were you --

A. When you say repurchase transaction --

Q. That's the transaction that I think you were just referring to where Barclays supplied funding for the firm.

A. Right. Where Barclays took the Fed out of their repo position.

Q. OK. And give me a little more detail, if you would, on your activities in connection with the repo transaction. What did you do in connection with the repo transaction?

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A. Well, I was asked to join people from Barclays in a meeting with the Fed to talk through the logistics and details of how that transaction would take place. And then on the -- that was on the Wednesday.

And then on the Thursday was, you know, involved in -- together with other folks at Lehman, in insuring that the -- you know, the collateral movements and cash movements were taking place as, you know, expected by the transaction.

Q. Is it fair to characterize what you were engaged in during those couple of days as negotiations with Barclays over the terms of the repo?

A. There was no negotiation with regard to the terms of the repo. The repo was -- the repo with the Fed was governed by the haircuts that the Fed applied to various term -- parts of collateral, and then when the collateral went over to Barclays, it was again being driven by the Schedule A that Barclays had in place.

So there was no negotiation or pricing elements involved in that at all. It was just the

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sold out and they would realize their cash as a result of that sale.

So there is standard haircuts that operate across the marketplace, and in certain cases individual institutions would adjust their haircuts relative to the standards that prevailed in the marketplace, and that tends to get characterized on a schedule that is just called the Schedule A. So I am using shorthand for that.

Q. When you refer to a haircut, just to try to put this in layman's terms, the haircut is the difference between the value of the security used as collateral and the amount at which the purchaser will pay for it on the first leg of the repo, yes?

A. It is the difference between the amount of cash that somebody is willing to extend to a given collateral value. So if there is, you know, \$100 worth of government bonds, they would be willing to, just to make the point, extend \$99 of cash, because in the event that they -- the repo had to get canceled, they would take the government bonds and they would have to sell those government bonds to recover the 99 of cash that

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mechanics of moving collateral out of the Fed and getting cash back for that, playing cash to the Fed, and then the reverse on the Barclays side, getting the collateral to Barclays and receiving cash in from Barclays.

MR. BERNSTEIN: The record says "playing cash to the Fed." Did you say "playing" or "paying"?

THE WITNESS: "Paying."

MR. BERNSTEIN: Thank you. Go ahead.

BY MR. GAFFEY:

Q. Were there any discussions with Barclays about what implied interest rate would be applied in the reverse repo?

A. Not that I was aware of.

Q. When you referred to the Schedule A a moment ago, is that -- could you describe for me what you meant by Schedule A?

A. In financing transactions, any counterparty that's extending cash against collateral would specify what are the haircuts that apply to any piece of collateral that they would be willing to lend against to protect them in the event that that collateral needed to be

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they extended, and there is always uncertainty in what you can sell collateral for in the marketplace, even if it is very liquid collateral, and the haircuts would tend to be larger for less liquid security.

Q. What was the mechanism by which the collateral underlying the fed repo was valued?

A. Well, within triparty, the triparty agent, so in the case of the fed repo, JP Morgan Chase maintains as part of their triparty service a pricing mechanism for the collateral that's being funded on behalf of, in our case, Lehman with the various funding counterparties, so that pricing is part of the triparty service, so that that pricing would have been provided by JP Morgan Chase in the example of the Fed repo.

Q. Do you know if there was any comparison made between the pricing that JP Morgan Chase applied in the triparty and the values ascribed to the particular securities as collateral on Lehman's books?

A. Well, these would be, you know, liquid securities, so the pricing, one would expect the pricing to be the same or very similar. I

1 LOWITT - HIGHLY CONFIDENTIAL
2 wouldn't imagine that there would be sources of
3 difference.

4 **Q. Thanks.**

5 **Was there a comparison made, do you**
6 **know?**

7 A. I'm not aware of a specific
8 comparison.

9 **Q. Was there anything else that you did**
10 **in connection with arranging the repurchase -- for**
11 **Barclays to take over the Fed repo?**

12 A. Nothing that I recall specifically
13 that we haven't talked about already.

14 **Q. Did you consider it part of your**
15 **duties in the course of doing that work to protect**
16 **the interest of Lehman?**

17 MR. BERNSTEIN: Objection, vague and
18 ambiguous.

19 A. I saw myself as having to support
20 Lehman Brothers and do the -- and I was an
21 employee of Lehman Brothers at that point, so yes.

22 (Exhibit 216, document Bates stamped

23 BCI-EX77335 through 37 marked for
24 identification, as of this date.)

25 **Q. Mr. Lowitt, I have put before you what**

1 LOWITT - HIGHLY CONFIDENTIAL
2 that are consistent with my present duties with
3 Lehman Brothers. That was what I understood that
4 I was signing.

5 **Q. OK. And the date on your signature on**
6 **the third page, 18 September, is that the date on**
7 **which you signed this offer?**

8 A. I believe it is.

9 **Q. Did you think there was any conflict**
10 **between your obligations to protect the interests**
11 **of Lehman through the rest of the week and the**
12 **fact that you were under -- you had accepted an**
13 **offer from Barclays for employment for which you**
14 **would be paid in excess of \$10 million?**

15 A. Well, I -- I don't -- the \$10 million,
16 I'm not sure how you are getting to that. There
17 were a lot of things that needed to happen for me
18 to receive payment, including remaining with
19 Barclays through sort of the time when bonuses
20 were paid, to get initial payment of, what I see
21 here is \$4.560 million, and then I would need to
22 remain employed with Barclays through the
23 anniversary dates to get the special cash awards.

24 So those were the numbers of what I
25 was expecting to get paid. I knew that this was

1 **LOWITT - HIGHLY CONFIDENTIAL**
2 **we have marked as Exhibit 216. Do you recognize**
3 **the document?**

4 A. I do.

5 **Q. Is that your employment agreement with**
6 **Barclays?**

7 A. I don't know if it is an employment
8 agreement. It is certainly the offer that I got
9 from Barclays that I signed on the 18th that we
10 talked about. I guess I'm just not sure what
11 employment contract means, but yes, it is the
12 agreement that I signed with Barclays.

13 **Q. Well, in this document, you agree to**
14 **work with Barclays and they agree to pay you a**
15 **certain amount of money, correct?**

16 A. Yeah, I did sign the document.

17 **Q. And you understood it to be an**
18 **agreement by you to work for Barclays, and an**
19 **agreement by Barclays to pay you a certain amount**
20 **of money for that, correct?**

21 MR. BERNSTEIN: Objection,
22 misrepresents the document.

23 A. It is an offer to join Barclays
24 Capital. It is subject to the transaction
25 closing. It specifies duties and responsibilities

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2 conditional on the transaction closing. And until
3 that point, I remained an employee of Lehman
4 Brothers.

5 **Q. My question is -- let me rephrase the**
6 **question a bit.**

7 **Did you see any conflict between your**
8 **obligations during the week between the 15th and**
9 **the 22nd to protect the interests of Lehman in the**
10 **fact on the 18th of September you had an agreement**
11 **signed with Barclays where you stood to be paid up**
12 **to \$10 million over the next two years?**

13 A. I recognize that in that week, I was
14 an employee of Lehman Brothers, I was working
15 to -- in the interests of -- I was working in the
16 interests of Lehman Brothers. If a transaction
17 did occur, then I had an opportunity to join
18 Barclays and contribute to Barclays and get paid
19 by Barclays.

20 **Q. And if the transaction with Barclays**
21 **had not closed, what were Lehman's prospects?**

22 A. Oh, I think that Lehman -- I don't
23 know -- it is pure speculation on my part, but it
24 would have been difficult to see how Lehman would
25 have, you know, continued to operate. I mean post

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2 the bankruptcy, the objective was to wind down LBI
3 in an orderly fashion. Whether one could in fact
4 have wound it down in an orderly fashion given how
5 much turmoil there was in the market the week
6 after the bankruptcy filing in the absence of the
7 transaction I think has to be seen as quite
8 unlikely.

9 **Q. And you would have lost your job?**

10 A. I would not have been employed by
11 Lehman. I mean possibly, as others, would have,
12 you know, joined the estate in assisting with the
13 wind-down of the remaining positions as other
14 folks did. But --

15 **Q. Was it your view you could make that**
16 **amount of money working for the estate?**

17 A. I really wasn't focused on how much
18 money I was potentially going to make if I stayed
19 at Barclays (sic) through the course of that week.
20 I was working to see if we could -- we could get a
21 transaction with Barclays which we all believed
22 were in the interests of our employees and all the
23 participants, including the creditors.

24 **Q. Did you discuss with anyone whether**
25 **the fact that you had a signed offer letter with**

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2 **Q. And can you tell me who were the**
3 **Barclays folks who came to meet with your**
4 **counterparts at Lehman to understand what was the**
5 **inventory and assets in the firm?**

6 A. I don't know the names of all of them.
7 But the -- you know, the head of interest rates
8 would have met with the head of interest rates at
9 Lehman, and the head of credit would have, you
10 know, met with Eric Felder, for example.

11 **Q. Can you give me a roster of who was**
12 **involved in the Lehman side on this activity?**

13 A. I think the people -- not a complete
14 list, but it would have included Mike Gelband, who
15 was the head of capital markets. It would have
16 included Alex Kirk, and it would have included
17 Eric Felder.

18 There may well have been others, but
19 those three I'm sure were involved.

20 **Q. Did any of them meet with you, any of**
21 **the Barclays people meet with you at that point?**
22 **I'm on the Monday into the Tuesday.**

23 A. I mean I met with Rich Richie. I --
24 there were some meetings -- I wouldn't say a
25 meeting, but sort of contact where we were --

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2 **Barclays on September 18 presented a conflict in**
3 **your duties?**

4 A. There were people within Lehman who
5 obviously knew that I was one of the eight, and
6 given that I wasn't involved in the negotiation, I
7 didn't feel a specific conflict.

8 **Q. Thank you.**

9 **Let's go back to the negotiations, all**
10 **right. I want to, just to frame this for a time**
11 **period point, I want to go back to the Monday,**
12 **which is when I think you told me you first spoke**
13 **to Mr. McDade about the fact there were renewed**
14 **negotiations with Barclays. That was the Monday,**
15 **correct?**

16 A. That is correct.

17 **Q. What is your understanding of what**
18 **happened next between the Monday and the Tuesday?**

19 A. Well, in the Monday evening, you know,
20 a number of Barclays folks came to meet with their
21 counterparts at Lehman to understand, you know,
22 what was the inventory and the assets in the firm.
23 And then there were, you know, groups of folks who
24 were also involved that evening in crafting a
25 deal.

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2 where I was introducing some of the Barclays
3 people to some of the Lehman people.

4 I mean I recall one situation where
5 there was one asset that the Barclays folks
6 weren't sure what it was, and the person who was
7 in a position to explain it was Jim Seery, so I
8 put the Barclays person, whose name I can't
9 recall, in contact with Jim to understand the
10 particular asset.

11 **Q. And did any of the people who worked**
12 **directly for you, who were your direct reports or**
13 **people who reported to them, were they involved in**
14 **these meetings with the Barclays folks to**
15 **understand the inventory and assets of the firm?**

16 A. I don't know. You know, Jerry Reilly,
17 who was the head of product control, may well have
18 been involved in some of those meetings, given
19 that he was knowledgeable about some of the
20 assets, but I'm not aware specifically of any of
21 my reports meeting specifically with people
22 specifically at Barclays, but they may well have.

23 **Q. When you met with Mr. Richie, you**
24 **talked about the fact that you were one of the**
25 **eight and that he wanted you at Barclays. Did you**

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2 **talk about anything else?**

3 A. I don't recall talking about other
4 things.

5 **Q. Did there come a time when you learned**
6 **that an agreement of terms had been reached**
7 **between Lehman and Barclays?**

8 A. Well, there were, you know, a number
9 of us waiting in the morning of Tuesday to hear
10 that terms had been reached between the two firms,
11 and at some point on the Tuesday morning, I was
12 aware that a deal between the two firms had, in
13 fact, been reached.

14 **Q. How did you become aware of the fact**
15 **that a deal between the two firms had been**
16 **reached?**

17 A. I can't recall precisely. I imagine
18 somebody who was in the room negotiating would
19 have come out and shared with, you know, the
20 senior Lehman folks who were waiting on the 32nd
21 floor that that had taken place, but I can't be
22 more specific in my recollection.

23 **Q. Who were the senior Lehman folks who**
24 **were waiting on the 32nd floor to learn whether an**
25 **agreement had been reached?**

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2 up assets and liabilities, and again a number of
3 folks in Lehman were involved in that effort.

4 **Q. And what were you doing? What were**
5 **your activities? You described that there were**
6 **teams looking at assets and teams looking at**
7 **liabilities. I want to get a sense of what you**
8 **were doing over the night from Monday to Tuesday,**
9 **from the 15th to the 16th.**

10 A. Well, part of what I was doing was
11 meeting with some of the -- as I indicated, you
12 know, introducing some of the Barclays folks to
13 Lehman folks, and some part of what I was doing
14 was, let's say maintaining a sense of where those
15 discussions were coming out. And that's mostly
16 what we were doing.

17 **Q. And were those discussions that you**
18 **refer to, when you say, talk about the discussions**
19 **and how they were coming out, are those the**
20 **discussions -- did they include what the value of**
21 **the assets are that Barclays will purchase from**
22 **Lehman?**

23 A. Yeah. It included both -- you know,
24 there were certain assets that as the Barclays
25 folks understood them, they decided they would not

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2 A. Well, it included -- my recollection
3 is Skip McGee was there, Paul Parker. It would
4 have involved, included some of the finance folks
5 that had been working that evening. So Jerry
6 Reilly, Martin Kelly.

7 **Q. A tumultuous week for everybody. Are**
8 **you there on the premises all night?**

9 A. Yeah, I was.

10 **Q. What were you doing, other than**
11 **waiting?**

12 A. I was involved in collecting the input
13 that was being generated by different parties,
14 vis-a-vis the assets that were, you know, going to
15 be part of the transaction.

16 **Q. Tell me what you did in terms of**
17 **collecting input that was generated by different**
18 **parties vis-a-vis the assets that were going to be**
19 **part of the transaction.**

20 A. There were a number of people that
21 were, you know, involved in that. There was
22 obviously input from the various business teams
23 with regard to which assets the Barclays folks
24 were interested in purchasing and which ones they
25 weren't. There was, you know, an effort to match

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2 want to purchase them, and then there were also,
3 as one would expect, if you were buying big blocks
4 of assets, that you would -- that the price that
5 you would offer to purchase those big blocks of
6 assets would be less than what those assets were
7 trading in the marketplace at that point in time.

8 **Q. Did Lehman's books at that time fairly**
9 **reflect the value of the assets according to how**
10 **they were trading at the time?**

11 A. Yes, I believe they did.

12 **Q. So it was your understanding on the**
13 **15th and the 16th of September of 2008, that**
14 **Lehman's books carried accurate marks for**
15 **securities that were recorded therein; is that**
16 **correct?**

17 A. Yeah. The assets that were on
18 Lehman's books were, particularly LBI, were
19 securities, and securities are priced based on,
20 you know, market sources, and our books and
21 records were accurate.

22 **Q. And as CFO, you were comfortable with**
23 **the fact that Lehman's books and records were**
24 **accurate; is that right?**

25 A. There is obviously an enormous process

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that finance goes through and business goes through to validate those prices, and I had confidence in that process to establish the pricing.

Q. Do you know if -- when you learned on the Tuesday morning that there was a deal, what is your memory of the terms that you learned?

A. I didn't know all of the -- I wasn't party to all of the terms. You know, I was aware that the -- that Barclays was going to purchase a substantial block of assets for less than the amount that we had on our books to reflect a sort of bid offer that reflected both the size of the purchase, as well as the inherent volatility in the market, which was significant that week.

Q. So was Barclays agreeing to buy the assets at a fixed discount?

MR. HUME: Objection, vague and ambiguous.

A. Barclays were going to purchase the assets at a price they were willing to pay to purchase a substantial block of assets at a time that was tumultuous in the marketplace. That amount was less than the amount that those assets

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agreement for that transaction; is that correct?

MR. HUME: Objection, lacks foundation.

A. The -- my understanding of the transaction was that it included that feature, and how it was reflected in any agreement is not something that I know about.

Q. Tell me what you know about the process by which this difference between the amount shown on Lehman's books and the amount Barclays would pay was determined.

A. I think it was a combination of what I term sort of bottom up, as the Barclays folks met with the Lehman folks and looked at the assets specifically, as well as, you know, a top-down view that, you know, emerged from the negotiation between Lehman and Barclays.

Q. This may be an inartful question, but what ultimately governed the decision as to the amount of the difference between the amount shown on Lehman's books and the price paid? The bottom-up process or the top-down view?

MR. HUME: Objection, lacks foundation.

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were on our books for.

Q. Was it a discount from the amount shown on Lehman's books?

MR. HUME: Same objection.

A. You keep asking whether it was a discount. It was an amount that was less than the amount that we had it on our books for, which reflected a bid offer that was consistent with the size of the purchase, as well as the volatility in the marketplace.

Q. Is there a reason you are not agreeable to the term "discount" to describe that?

A. I think my explanation of it is more accurate. The shorthand for it could be discount. I think that it is important to reflect that the marks that we had on our books were accurate, which I believe was the case, as well as the fact that if you are going to sell a very substantial block of assets, you sell it for an amount, or somebody is going to pay you less than the amount that you actually have it on your books for.

Q. If someone is going to pay you less than the amount that you have it on your books for, you would expect that to be recorded in the

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A. I mean it is hard for me to say. I wasn't part of the discussion. But I would say that the bottoms-up view would have informed what was going on inside the negotiating room, but that in the end, it must have been what was agreed to between the parties in their negotiating sessions.

Q. Do you know if what was agreed to between the parties in their negotiating session with regard to this difference between the amount shown on the books and the price paid was an agreement in terms of a percentage of what was shown in the amount of the books or a raw number?

A. My recollection is that it was a number, not a percentage.

Q. What was the number?

A. My recollection is it was \$5 billion.

Q. And do you know how that \$5 billion number was calculated? How it was generated?

MR. BERNSTEIN: Objection, asked and answered.

But you can answer it again.

A. I don't know how it was derived, but I understand that if you were buying a big block of assets in one go in a very volatile market, you

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2 would expect to have a fairly substantial bid
3 offer spread associated with that purchase.

4 **Q. Again, it is something I will ask you**
5 **in more detail as we go through the day, but to**
6 **your understanding, sir, the deal changed in form**
7 **over the week?**

8 A. Well, the deal that was consummated
9 and approved by the judge was a completely
10 different deal than the deal that was worked
11 through on the Monday night/Tuesday morning.

12 **Q. I want to get up to the point -- when**
13 **the deal is approved by the judge, it is at the**
14 **hearing that takes place on Friday, the 19th? Can**
15 **we agree on that? I am trying to put the date on**
16 **that.**

17 A. We can agree on that.

18 **Q. That is all I want you to agree on, is**
19 **the date.**

20 **In addition to the Tuesday morning**
21 **when you learn there is a deal and the hearing on**
22 **the 19th, the repo arises, right? Barclays steps**
23 **into the shoes of the Fed on the repo?**

24 A. The Fed insists on Barclays taking
25 them out of the repo.

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2 off the collateral in order to get the cash back
3 that they have extended.

4 And so in a -- the repo that we did
5 with Barclays was done in a way that was
6 completely sort of market standard, and it did
7 include the financing haircut that was typical,
8 and so it is accurate that the transaction as it
9 took place did include that Barclays received
10 collateral for cash through the repo transaction.

11 **Q. And that --**

12 A. And there was a difference between the
13 amount of repo and the cash proceeds, but they
14 were different and not really related to the
15 original transaction.

16 **Q. And the difference between the amount**
17 **of the repo and the cash proceeds was**
18 **approximately \$5 billion, correct?**

19 MR. HUME: Objection, lacks
20 foundation.

21 A. It, it -- I mean it was in that
22 region.

23 **Q. Now, let's go back to the Tuesday**
24 **morning when you learn about the deal. I may be**
25 **treading on a few things you already told me.**

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2 **Q. For whatever reason, Barclays takes**
3 **them out of the repo?**

4 A. Correct.

5 **Q. The repo ultimately plays a role in**
6 **the transaction, correct?**

7 MR. HUME: Objection, vague and
8 ambiguous.

9 **Q. The deal ultimately becomes giving to**
10 **Barclays the collateral that's in the repo, yes?**

11 MR. BERNSTEIN: Objection, vague and
12 ambiguous.

13 A. The deal was that Barclays would keep
14 the collateral that was in the repo, and those
15 were the assets that Barclays was going to take as
16 part of the transaction.

17 **Q. And the \$5 billion number we talked**
18 **about before, did that number stay in the deal**
19 **through its various iterations?**

20 A. Well, the repo transaction was just a
21 different thing. As we discussed earlier, you
22 know, the standard repo construct is one where a
23 lender extends less cash than the amount of
24 collateral they receive to protect them in the
25 event that they have to cancel that repo and sell

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2 **You learn about it from -- I just**
3 **forget if I asked you this. From whom did you**
4 **learn about the terms of the deal?**

5 A. As I said earlier, I didn't recall
6 specifically. It was part of a group of us
7 waiting to hear and we heard simultaneously.

8 **Q. And where were you when you heard**
9 **about the terms of the deal simultaneously?**

10 A. We were on the 32nd floor of 745.

11 **Q. And this was very early in the morning**
12 **of Tuesday?**

13 A. I don't think it was very early in the
14 morning. Again, I don't have a precise
15 recollection, but I think that this continued
16 through the morning.

17 **Q. Did there come a time when you**
18 **attended a meeting of the boards of Lehman**
19 **Brothers Holdings, Inc. and Lehman Brothers, Inc.**
20 **on the morning of Tuesday, September 16?**

21 A. I don't recall attending a board
22 meeting on the Tuesday.

23 **Q. No recollection of that at all?**

24 A. I don't. I was very tired, so I --
25 it's possible, but I have no recollection of it.

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2 **Q. Do you have any recollection of the**
3 **deal being described to the board by anybody?**

4 A. I don't have a recollection of being
5 at a meeting of the board, so, no.

6 **Q. Do you ever learn one way or another,**
7 **whether you attended or not, whether the deal had**
8 **been described to the board?**

9 A. I mean I would have assumed it would
10 have been presented to the board and approved.
11 But I wasn't aware of anything specific to it, or
12 I don't recall being aware of anything specific to
13 it, but I would have expected that it would have
14 been presented to the board.

15 **Q. Did there come a time when the**
16 **agreement between Lehman and Barclays was reduced**
17 **to a written contract?**

18 A. Well, I know there was a contract that
19 was worked on on the Tuesday, and I know that
20 there was, you know, various clarifications that
21 were made to that, but I wasn't involved in the
22 drafting or commenting, you know, of that.

23 **Q. At any point during the week?**

24 A. At any point during the week.

25 **Q. Did you ever see the contract that was**

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2 A. I have seen it as part of my meetings
3 with my counsel.

4 **Q. Apart from meetings you may have had**
5 **to prepare for your deposition, have you ever seen**
6 **the document before?**

7 A. I didn't read it ahead of this, no.

8 **Q. I am asking a different question.**
9 **Putting aside what documents you may have reviewed**
10 **with counsel --**

11 A. Right.

12 **Q. -- to prepare for your deposition,**
13 **independently of that activity, have you ever seen**
14 **the document marked as Exhibit 1 before?**

15 A. I don't recall having seen the
16 document before that.

17 **Q. You learned that there was a written**
18 **agreement between Lehman and Barclays, yes?**

19 A. Yes.

20 **Q. Did you ever ask to see it at the**
21 **time?**

22 A. I was -- I don't recall asking to see
23 it at the time.

24 **Q. Did any of your activities in the**
25 **ensuing week require you to understand the terms**

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2 **first agreed?**

3 A. I don't recall I did.

4 **Q. I am sorry?**

5 A. I don't recall that I did.

6 **Q. I just need to press that a little**
7 **bit. You don't recall seeing it or you don't**
8 **recall whether or not you saw it?**

9 A. I don't recall seeing the contract.

10 **Q. This might be quite an event for you.**
11 **I am about to show it to you.**

12 A. Can I take a quick break? Is that OK?

13 **Q. Sure.**

14 A. Thank you. Very quick.

15 (Recess)

16 BY MR. GAFFEY:

17 **Q. Mr. Lowitt, I have put before you what**
18 **we have marked as Exhibit 1 at a prior deposition,**
19 **a document entitled Asset Purchase Agreement among**
20 **Lehman Brothers Holdings, Inc., Lehman Brothers,**
21 **Inc., LB745 LLC, and Barclays Capital, Inc., dated**
22 **as of September 16, 2008.**

23 **Would you look through the document,**
24 **sir, sufficiently to tell me whether you have ever**
25 **seen it before.**

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2 **of the agreement?**

3 A. I don't believe they did.

4 **Q. When you learned the terms of the**
5 **agreement, sir, without regard to the exhibit I**
6 **gave you, when you learned the terms of the**
7 **agreement, did you also learn that Barclays would,**
8 **as part of the deal, assume certain liabilities?**

9 A. I mean my understanding of the
10 transaction was that Barclays was going to assume
11 additional liabilities in addition to the sort of
12 asset liability -- the work around the individual
13 assets and the liabilities associated with those.

14 **Q. Did you come to understand that in the**
15 **deal there would be an extra \$1 billion of**
16 **compensation beyond Lehman's accrual?**

17 A. I mean I was aware that the
18 compensation liability that Barclays was taking on
19 was \$2 billion.

20 **Q. Did you understand that to be**
21 **\$1 billion beyond Lehman's accrual?**

22 A. Well, I understood it to be the total
23 compensation, which as we would have thought about
24 it at Lehman would have included both a cash
25 component and a stock component.

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2 **Q. Was it \$1 billion above the accrual**
3 **that Lehman had for those components?**

4 A. We would not have accrued for the
5 stock component of compensation that was granted
6 in -- at the end of that year. We would have been
7 accruing for that over the five years, three or
8 five years that that stock was vesting.

9 So the accrual would have been for the
10 bonus, and then in addition to that, away from the
11 bonus accrual, we had expensed the cost of the
12 prior equity awards that were continuing to vest
13 through 2008. So compensation that was included
14 in the 2 billion would have been more than just
15 the bonus piece, it would also have, in my mind,
16 included a component that would have been stock.

17 **Q. Now, putting before you, Mr. Lowitt,**
18 **what has previously been marked as Exhibit 24 and**
19 **what has previously been marked as Exhibit 25.**
20 **And with respect to those two documents, sir, I'll**
21 **ask you the same question. Take a look through**
22 **them sufficiently to tell me whether you have seen**
23 **them before.**

24 A. I don't believe I've seen either of
25 these documents before.

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2 **Amendment to the asset purchase agreement?**

3 A. No.

4 **Q. You knew generally at the time -- and**
5 **by the time, I mean the week between the 15th and**
6 **22nd, that there were changes in the deal that**
7 **were memorialized in some way, correct?**

8 A. Yes.

9 **Q. Did you ever ask to see the writings**
10 **that memorialized those changes in the deal?**

11 A. I don't recall ever asking to see
12 those.

13 **Q. To conduct the activities you were**
14 **conducting in connection with the deal, did you**
15 **think you needed to understand or see the written**
16 **terms of the deal?**

17 MR. BERNSTEIN: Objection. Compound.

18 A. I -- I don't believe I -- I didn't ask
19 to see it, so I felt -- I believe I would have
20 felt competent to fulfill my duties without having
21 read it.

22 **Q. Did you attend any of the hearings**
23 **before the bankruptcy court concerning the**
24 **transaction?**

25 A. I did not.

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2 **Q. Now, Exhibit 24 is a First Amendment**
3 **to the asset purchase agreement, and Exhibit 25 is**
4 **a letter dated as of September 20, which has come**
5 **to be called the clarification letter. Have you**
6 **heard that term before?**

7 A. I have.

8 **Q. And when did you hear the term**
9 **"clarification letter" in connection with the**
10 **transaction between Lehman and Barclays?**

11 A. I would have heard of the
12 clarification letter actually subsequent to the
13 transaction closing, is my recollection.

14 **Q. How long after the transaction closed**
15 **did you first hear about the clarification letter?**

16 A. My recollection around that is hazy,
17 but it would have been a few weeks, probably
18 within a few weeks of the transaction closing that
19 there was a clarification letter.

20 **Q. Do you remember anything about the**
21 **circumstances under which you learned a few weeks**
22 **after the closing about a clarification letter?**

23 A. No.

24 **Q. Did you -- until I have shown it to**
25 **you today, did you ever know there was a First**

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2 **Q. Did you have reports from anyone who**
3 **did attend the hearings before the bankruptcy**
4 **court about the transaction, about what was going**
5 **on at the hearings?**

6 A. I recall having conversations with
7 Steve Berkenfeld on the weekend after the 7th --
8 the Friday evening, about it, but don't have
9 recollection of specific details of that
10 conversation.

11 **Q. Do you have a general recollection of**
12 **what Mr. Berkenfeld was recounting to you in those**
13 **conversations about the hearing?**

14 MR. BERNSTEIN: Is Lehman --
15 Mr. Berkenfeld, as I understand it, was a
16 Lehman lawyer. Is everyone comfortable
17 waiving the privilege?

18 MR. GAFFEY: Mr. Berkenfeld was not
19 acting as a lawyer at that time, so it is
20 not a waiver of privilege.

21 MR. BERNSTEIN: No one is going to
22 assert that this witness is violating the
23 privilege by answering this question. There
24 are lots of constituents around the table.

25 MR. GAFFEY: I'm not. I'm not going

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to --

MR. BERNSTEIN: If anyone is going to assert that, they need to assert that now.

MR. GAFFEY: I am not going to assert that.

MR. HUME: Barclays may assert that Berkenfeld was acting as a lawyer and this is waiving the privilege. At least we reserve the right to reserve that.

MR. GAFFEY: I would disagree with that.

Q. Could you answer the question, please.

A. Could you --

Q. Do you recall generally what Berkenfeld told you about the hearing when he spoke to you after the -- over the weekend after the hearing had taken place?

A. I think he was recounting the broad narrative of how it had proceeded without giving very specific details of what had actually transpired. But again my recollection of it is low on sort of detail. I just recall having that conversation with him.

Q. Before our break in one of your

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aware of those.

Q. And what, as best you recall, is the value of those additional elements, dollar value?

A. The dollar value of the unencumbered collateral was in and around \$2 billion, and, you know, the 15c3 excess, my understanding of the deal that was reached vis-a-vis the 15c3 excess was around 750 to 800 million dollars.

Q. And why, why was -- why were different sources of values being identified on the Friday to be transferred to Barclays?

A. I mean I was asked to identify potential sources of value by Bart and by Rich. I wasn't part of the discussions of why that was necessary.

Q. By Rich, do you mean Mr. Richie?

A. Rich Richie. I am sorry. Mr. Richie.

Q. What did Mr. Richie say to you about identifying different sources of value?

A. Just that we needed to identify those, we, Lehman, needed to go and identify where there were different sources of value and what those would be.

Q. And do you remember anything else

LOWITT - HIGHLY CONFIDENTIAL

answers you mentioned that the deal that was approved by the court at the hearing was a different deal than the one that had been reached on the Tuesday. Do you recall that?

A. I do.

Q. How did you learn that the deal that was approved by the court was a different deal than the one that had been reached on Tuesday?

A. Well, there were -- as specific examples, you know, the work that we had done on the Friday to identify additional sources of value for the transaction were clearly elements that were included in the final transaction which were not part of the transaction that was discussed on the Monday and Tuesday.

Q. What were the different sources of value that were identified on the Friday?

A. There was a 15c3 lock-up excess and unencumbered collateral in LBI.

Q. Anything else?

A. I wasn't party to all the elements of what went into the transaction, but I was aware of the work that we did on, you know, those elements. So there may have been others, but certainly I was

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about what Mr. Richie said about identifying additional sources of value?

A. I don't recall additional details of that conversation, no.

Q. Describe the setting in which Mr. Richie told you that Lehman needed to identify additional sources of value. Meeting, phone call?

A. It was a meeting. I had an office on the 31st floor, Rich had an office that he was operating out of on the 31st floor, so we would have -- I can't recall precisely where we met, but we met probably somewhere on the 31st floor.

Q. Was anyone else present when you had this conversation with Mr. Richie?

A. I don't believe anybody else was present.

Q. Did you have the conversation with Mr. Richie before or after you had a conversation with Bart McDade about identifying additional sources of value?

A. I can't be certain, but I believe it was after I spoke with Bart.

Q. So was Bart McDade the first person who discussed with you identifying additional

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sources of value?

A. I believe that to be the case.

Q. Was anyone else present when you had this conversation with Bart McDade?

A. I don't recall anybody else being present.

Q. As best you remember, what did Mr. McDade say to you about finding additional sources of value?

A. I don't have a specific recollection of the conversation, but I would -- I would expect that he would have asked me where, if anywhere, were there additional sources of value we could include in a new transaction.

Q. Did Mr. McDade give you a target number for additional sources of value? How much he needed to find?

A. My recollection is between 3 and 4 billion dollars.

Q. Did you ask him why you needed to find 3 to 4 billion dollars in additional value on that Friday?

A. I don't recall the details of that conversation, so I can't be clear on whether I did

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ask him about that or not.

Q. Without regard to the specific conversation, Mr. Lowitt, after you had these conversations, you spent a considerable amount of time that day looking for 3 to 4 billion dollars in additional value, correct?

A. That is correct.

Q. Who worked with you in that endeavor to find 3 to 4 billion dollars in additional value?

A. The main person I worked with on that was Paolo Tonucci, and we would have also included Jerry Reilly and probably Alastair Blackwell.

Q. Did you have an understanding as to whether finding an additional 3 to 4 billion dollars in additional value was important to the transaction?

A. I mean at some level, it needed to be important to the transaction or we wouldn't have been asked to find it.

Q. I agree with the inference, but it is a different question.

My question is, is -- did you have an understanding at the time as to whether it was

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important to the transaction?

MR. HUME: Objection, vague and ambiguous.

A. I don't recall how I was thinking about it. I know that I worked hard on it, you know, on the Friday and into the weekend. So I would have thought it was important.

Q. Did you express to anyone you were working with in this endeavor to find 3 to 4 billion dollars in additional value that it was critical to the deal?

A. I don't recall expressing that to people, but it was obviously, you know, an important exercise, an important element of, you know, the new transaction post the repo.

Q. What was your understanding of why it was an important element of the new transaction post the repo?

A. I don't have specific recollection. I do know that there was -- it was a pretty tumultuous marketplace, and obviously the discussions between, you know, Barclays and Lehman, Barclays communicated to Lehman that it was important that this additional source of value

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was located.

Q. Do you know that as a matter of fact or as a matter of inference that Barclays communicated that to Lehman?

A. I know that as a matter of inference. I wasn't party to those discussions. Thank you for clarifying.

Q. Did anyone tell you that Barclays had communicated that it was important?

A. I don't recall anybody saying that specifically, but as I say, the fact that I was working on it, it was clear to me it was important.

Q. It can fairly be said that the work that you did on Friday into the weekend to find the additional value was a fairly intense activity, correct? There was a lot of effort being put into this, correct?

MR. BERNSTEIN: Objection, asked and answered.

A. Yeah, we worked hard on Thursday into the weekend.

Q. Were you curious why you needed to find 3 to 4 billion dollars of additional value

1 **LOWITT - HIGHLY CONFIDENTIAL**
2 **for the transaction post the repo?**

3 A. I mean the transaction had changed.
4 The circumstances in the marketplace were
5 tumultuous. It wasn't a great surprise to me that
6 Barclays was, given the risk they were taking on,
7 looking for additional value.

8 **Q. Now, while you and these other**
9 **folks -- and Mr. Tonucchi and Mr. Reilly and**
10 **perhaps Mr. Blackwell and perhaps other folks,**
11 **were searching for 3 to 4 billion dollars in**
12 **additional value on that Friday, there was a**
13 **hearing in the afternoon going on down at the**
14 **bankruptcy court, correct?**

15 A. That's correct.

16 **Q. And you had no reports from the**
17 **hearing about what was going on? That's what you**
18 **told me, correct?**

19 A. Yeah, I don't believe I was -- I
20 certainly wasn't getting updates of how things
21 were going in the meeting.

22 **Q. Did you ever ask anyone if the judge**
23 **had addressed and approved the 15c3 issue?**

24 A. I do know as a result of an e-mail
25 that I saw as part of my preparation for this

1 **LOWITT - HIGHLY CONFIDENTIAL**
2 **surplus in 15c3, correct?**

3 A. I don't know if it's so much trade
4 settling, but 15c3 lock-up is sort of a regulatory
5 requirement which establishes a set of rules
6 which, based on customer assets and how they are
7 custodied, determines an amount of excess that you
8 need to hold against that.

9 And it is only in sort of the unwind
10 of all of those customer positions that you can
11 determine whether there is excess as calculated
12 per the formula or whether the actual excess is a
13 different number.

14 **Q. When you asked Bart whether the court**
15 **had approved this 15c3 component, did you think**
16 **the court needed to approve it before you could**
17 **operationalize transferring that to Barclays?**

18 A. If -- if those elements were not part
19 of a deal, then obviously there was no requirement
20 to operationalize those.

21 **Q. Was it your understanding that the**
22 **court needed to approve it for it to be part of**
23 **the deal?**

24 MR. HUME: Objection, lacks
25 foundation. Calls for a legal conclusion.

1 **LOWITT - HIGHLY CONFIDENTIAL**
2 deposition that I had asked that of Bart.

3 **Q. Did you get an answer from Bart?**

4 A. I don't recall the specific
5 conversation that I had with Bart, but I'm sure I
6 did.

7 **Q. Why were you asking Bart whether the**
8 **court had approved the 15c3 lock-up point?**

9 A. We needed to sort of operationalize
10 the movement of collateral, if that was part of
11 the approved transaction, and so my interest was
12 in determining what we needed to do to get
13 ourselves ready to close on the transaction.

14 **Q. My question is a bit more specific.**

15 A. It is less than -- 15c3 lock-up would
16 have been something that would have resolved over
17 a period of time as the customer claims were being
18 addressed. It was really around the unencumbered
19 collateral that we would have needed to
20 operationalize ourselves.

21 **Q. The 15c3 lock-up piece, let me be sure**
22 **I understand what you just said. As I understand**
23 **it, the reason it takes place over a period of**
24 **time is as trades settle and customer activity**
25 **takes place, you are able to realize how much is**

1 **LOWITT - HIGHLY CONFIDENTIAL**

2 A. All I wanted to know was whether we
3 needed to get ourselves set up on the Monday to
4 begin moving assets.

5 **Q. So I guess my question is, why didn't**
6 **you ask Mr. McDade, should I send it, should I**
7 **operationalize it, as opposed to did the court**
8 **approve it?**

9 A. I did understand that the court needed
10 to approve the transaction, and if the court had,
11 you know, not approved the transaction, then -- or
12 not approved elements of the transaction, then
13 there would have been no requirement to
14 operationalize it.

15 **Q. And you were asking Mr. McDade in that**
16 **e-mail about whether the court had approved the**
17 **15c3 component specifically, correct?**

18 MR. HUME: Objection, lacks
19 foundation.

20 MR. BERNSTEIN: Why don't we show him
21 the e-mail.

22 MR. GAFFEY: I want to get his
23 independent recollection first before it is
24 refreshed.

25 MR. BERNSTEIN: If you want to ask him

1 LOWITT - HIGHLY CONFIDENTIAL
2 specifically what he did in the e-mail, show
3 him the e-mail.

4 **Q. I think you can answer my question.**

5 A. Which is your question?

6 MR. BERNSTEIN: You have the right if
7 you're being asked about what a specific
8 document says to see the document.

9 THE WITNESS: OK.

10 MR. GAFFEY: I'm not sure that's so.

11 But let's not have that fight.

12 **Q. Let me ask you this. Did you review**
13 **documents to prepare for your testimony today?**

14 A. I did.

15 MR. BERNSTEIN: You can answer yes or
16 no.

17 A. Yes.

18 **Q. And can you tell me whether any of the**
19 **documents that you reviewed had the effect of**
20 **refreshing your recollection about the events I am**
21 **asking you about?**

22 MR. BERNSTEIN: You can answer that
23 yes or no.

24 A. I am struggling with it because I'm
25 not quite sure what -- of my ability to sort of

1 LOWITT - HIGHLY CONFIDENTIAL

2 MR. BERNSTEIN: You are asking him
3 whether he knows from sources other than
4 discussions with counsel what the court was
5 told?

6 **Q. Other than discussions with the**
7 **counsel representing you here today.**

8 A. I do not.

9 **Q. Do you know if the \$5 billion**
10 **difference between the amount at which assets were**
11 **carried on Lehman's books and the amount Barclays**
12 **agreed to pay, back on Tuesday, was disclosed to**
13 **the court?**

14 MR. BERNSTEIN: Again you are asking
15 for his knowledge other than his discussions
16 with counsel?

17 MR. GAFFEY: Counsel representing him
18 here today.

19 MR. BERNSTEIN: Counsel representing
20 him, period.

21 MR. GAFFEY: No, counsel representing
22 him here today.

23 MR. BERNSTEIN: My instruction is
24 counsel representing him, period. We all
25 have associates, et cetera.

1 LOWITT - HIGHLY CONFIDENTIAL
2 separate out if something refreshed it or not. In
3 some cases it probably did.

4 **Q. Can you tell me which documents had**
5 **that effect of refreshing your recollection of**
6 **events?**

7 A. I can't.

8 **Q. Do you know when the agreement was**
9 **made -- do you know, sir, if the agreement with**
10 **Barclays was changed or amended to include the**
11 **unencumbered collateral -- unencumbered collateral**
12 **and the 15c3 lock-up?**

13 MR. HUME: Objection, vague and
14 ambiguous and calls for a legal conclusion.

15 MR. BERNSTEIN: I would add no
16 foundation.

17 A. I wasn't party to the negotiation of
18 the deal, the writing of the contracts or what was
19 presented to the court, so I'm not in a position
20 to respond to that.

21 **Q. Did you know at the time -- well,**
22 **withdrawn.**

23 **Do you know now whether the court was**
24 **told about the 15c3 lock-up and the unencumbered**
25 **collateral?**

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2 MR. GAFFEY: OK, Willkie Farr or Boies
3 Schiller, I will take all of them.

4 MR. BERNSTEIN: Whoever his counsel
5 is.

6 MR. HUME: Or representing Barclays.

7 MR. GAFFEY: Fine.

8 A. Can you repeat the question.

9 **Q. Apart from talking to your own lawyers**
10 **or lawyers from Barclays, do you know if the**
11 **\$5 billion difference between the amount at which**
12 **assets were carried on Lehman's books and the**
13 **amount Barclays agreed to pay, back on Tuesday,**
14 **was disclosed to the court?**

15 A. I don't know what was disclosed to the
16 court, but I also would say that the transaction
17 that was presented to the court was not the
18 transaction that was the one that was agreed to on
19 the Tuesday. It mutated, it was different as a
20 result of sort of the repo and other factors.

21 **Q. Did the deal mutate over the weekend**
22 **of the 21st -- of the 20th and 21st?**

23 A. Again, I'm not really in a position to
24 say what happened because I'm not -- I don't know
25 what was really agreed to on the Friday and what

1 LOWITT - HIGHLY CONFIDENTIAL

2 was presented to the court.

3 **Q. Do you know -- whether you know the**
4 **specific means in which it did, do you know**
5 **whether the deal mutated over the weekend of the**
6 **20th and 21st?**

7 MR. BERNSTEIN: Objection, asked and
8 answered.

9 MR. HUME: Same objection, lacks
10 foundation.

11 A. Again, I just repeat the previous
12 answer, which was I didn't know what exactly went
13 into the deal on the Friday that was presented to
14 the court, so I'm not in a position to say whether
15 things changed. I wasn't party to the discussions
16 even over the weekend around what would have or
17 might have changed.

18 **Q. Did you ever get an understanding of**
19 **the components of the deal as it actually closed**
20 **on the 22nd?**

21 A. The 22nd is the --

22 **Q. Is the Monday.**

23 A. Is the Monday?

24 MR. HUME: Excluding conversations
25 with counsel.

1 LOWITT - HIGHLY CONFIDENTIAL

2 I never want you to disclose to me,
3 unless I specifically ask you for it,
4 anything that was disclosed to you by your
5 counsel from Willkie Farr or counsel
6 representing Barclays.

7 Would that solve the problem so we
8 don't have to solve it every time?

9 MR. BERNSTEIN: It doesn't solve his
10 problem. It has to be counsel, period.

11 MR. HUME: First of all, what about
12 in-house Barclays counsel? We are entitled
13 to object and to instruct the witness.

14 MR. GAFFEY: It will take longer.
15 That's fine. I have all day.

16 **Q. Do you have the question in mind?**

17 A. Can you repeat it for me, please.
18 (Record read)

19 MR. BERNSTEIN: Again, you can answer
20 the question except with reference to
21 information you have obtained from either
22 Barclays' counsel or your counsel.

23 THE WITNESS: No, I understand.

24 A. I had a sense of many but probably not
25 all of the elements of the transaction.

1 LOWITT - HIGHLY CONFIDENTIAL

2 A. Well, I knew that there was a fairly
3 detailed schedule which identified unencumbered
4 collateral that was, you know, reviewed by the
5 creditors' committee and was -- again I assumed,
6 not that I knew, included what -- the deal that
7 was agreed to with Barclays.

8 **Q. When you refer there to unencumbered**
9 **collateral, are you talking about the unencumbered**
10 **collateral you were looking for on Friday?**

11 A. Correct.

12 **Q. My question is a little broader. Did**
13 **you ever have an understanding of the overall**
14 **terms of the deal that closed on Monday? What did**
15 **Barclays get, what did Barclays pay?**

16 MR. HUME: Again objection to the
17 extent it calls for anything you learned
18 from Barclays' lawyers or your own lawyers,
19 I am instructing you on behalf of the
20 company not to answer. Preserve the
21 attorney/client privilege.

22 MR. GAFFEY: I -- hold that thought.
23 Let's see if we can save everybody some
24 speechifying. That will be a standing
25 instruction to the witness.

1 LOWITT - HIGHLY CONFIDENTIAL

2 **Q. Describe for me what your sense was,**
3 **what your understanding was.**

4 A. So my sense was that it included the
5 unencumbered collateral, it included the 15c3
6 lock-up excess or a component of 15c3 lock-up
7 excess, that it involved the cancellation of the
8 repo, it involved making offers to -- of
9 employment to legacy Lehman employees of LBI. It
10 included the exchange -- the exchange derivative
11 business and all the business -- the majority of
12 the businesses of LBI.

13 But again, the details of what was in
14 and what was out, there were details there that I
15 would not have been aware of.

16 **Q. Do you know if in connection with the**
17 **inclusion of the exchange derivative business any**
18 **cash was transferred to Barclays?**

19 A. Not aware.

20 **Q. So the unencumbered collateral, if I**
21 **have your testimony correctly, was approximately**
22 **2 billion?**

23 A. That's my recollection.

24 **Q. And the 15c3 was approximately**
25 **1 billion, correct?**

LOWITT - HIGHLY CONFIDENTIAL

A. I think my recollection was between 750 and 800 million dollars.

Q. And the collateral on the repo was approximately 50 billion, correct?

MR. HUME: Objection, lacks foundation, vague and ambiguous.

A. I believe it was in and around \$50 billion of collateral.

Q. So at least by my amateur math, my understanding, as I am adding it up, sir, tell me if I'm correct, your understanding is that Barclays got about \$52.8 billion in value?

MR. BERNSTEIN: Objection, mischaracterizes his testimony.

A. There was individual components of the deal. I don't think you could adequately -- you can correctly stand them up as you have just done that. And you are just mixing different concepts together.

Q. Why don't you tell me what you think Barclays -- let me ask you this. In your understanding, was the deal structured in a way that Barclays would have an immediate gain on acquisition?

LOWITT - HIGHLY CONFIDENTIAL
have an understanding or a view as to whether Barclays would enjoy immediate gain on the acquisition?

A. I had no sense of it.

Q. Mr. Lowitt, showing you what was marked at a prior deposition as Exhibit 19. Have you seen that document before?

A. I have.

Q. What do you recognize the document to be?

A. Monday night, Tuesday morning, we were tracking elements of the transaction and in particular the sort of net assets, the specific liabilities that we from a Lehman perspective understood that Barclays would be assuming in the transaction as it was conceived on the Monday and Tuesday period.

Q. Did you play any role in the drafting of the document we have marked as Exhibit 19?

A. I mean I can't recall precisely my role in this particular version, but I was certainly involved in the iterative work product that led up to this particular piece of paper.

Q. By iterative work product, are you

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A. I didn't know how Barclays was going to account for the transaction, but it wouldn't have surprised me that Barclays was going to get some equity out of the transaction, given the risks that they were taking on.

Q. Describe what you mean by that, given the risks that they were taking on? Why would it not surprise you given the risks that they were taking on?

A. I think they were taking on at least two risks. One was that as they looked to sell off the collateral on the repo trade, that they couldn't sell it out for -- you know, within the amount of the financing haircut.

And then the second risk is obviously, you know, any integration has a fair amount of risk, and they were going to employ, you know, a large number of Lehman people, and it was possible that they wouldn't have been successful in integrating all of those people and that the costs of those folks would have been more than they were generating in revenue.

Q. And at the time that the deal closed, again around the Monday, September 22nd, did you

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talking about prior drafts of this -- withdrawn.
What do you mean by iterative work product?

A. I believe there were earlier drafts of this as our understanding of what was going to constitute the transaction as we were getting a better sense of it through the morning of Tuesday.

Q. Now, on the asset side of this -- withdrawn.

On the asset side of this financial schedule, sir, there are descriptions of various asset classes. Do you see that? Government agency, commercial paper, et cetera?

A. I do see that.

Q. Are the amounts attributed to each of those asset classes -- withdrawn.

Were the amounts attributed to each of those asset classes the values shown on Lehman's books for each of those asset classes?

A. My understanding of what was reflected in these asset values would be the amount that Barclays would be paying for assets in those asset categories.

Q. So that roughly \$5 billion number that

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we talked about before is recognized in this document, Exhibit 19, correct?

MR. BERNSTEIN: Objection, vague and ambiguous.

A. It is not recognized in this, in the sense that these -- these asset numbers are post that -- reflect what Barclays were willing to pay for \$72 billion worth, \$72.65 billion worth of assets, which was less for reasons that we talked about earlier than the amount they were on Lehman's books for, and the amount less is probably the 5 billion that you referenced.

Q. Now, you told me a moment ago, sir, there were various drafts of iterative work product that led to this final. Do you recall how many different drafts of it there were before this document was a result?

A. I don't recall how many, but there were many, and that's -- just for clarification, you know, I'm not aware of why this is marked final, but there were a number of, you know, sort of iterations that led to whatever the final version of this thing was.

Q. And when were these iterations being

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generated? Is this during Tuesday, the 16th?

A. It would have started -- I can't say when it would have started, but it certainly would have continued through the morning of Tuesday.

Q. May have started as early as --

A. Monday evening.

Q. Monday evening. OK.

And who, if you know, was actually generating the document?

A. Again, my recollection is that it was one of the Weil lawyers who had the spreadsheets on his computer, but I don't know the name of that person.

Q. Do you -- can you describe that person?

A. A reasonably young man, but I'm afraid I can't be more specific than that.

Q. That would qualify every man in the room, sir. Can you give a more detailed description?

MR. BERNSTEIN: I just want to correct that. It wouldn't describe everyone in the courtroom.

Q. With the possible exception of Neil

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Oxford, it would be everyone in the room.

Do you have a more detailed description that you can give me, sir, than fungible young associate at Weil Gotshal?

A. I'm afraid I can't.

Q. Did he have it on a laptop? Did he have it on a computer, a PC?

A. I believe it was on a laptop that he had rather than a standing PC, just because he was in one of the dining rooms on the 32nd floor, so there aren't standing computers there. But that's based on my assumption rather than a specific recollection of whether it was a laptop or a computer.

Q. How do you know he worked for Weil Gotshal?

A. I can't be specific about how I knew. He wasn't somebody who was, you know, at Lehman, and he wasn't somebody at Barclays, but -- and my recollection is he was at Weil, but I unfortunately can't be more clear about how I knew he was at Weil.

Q. Is it anything other than process of elimination that makes you think that he worked

LOWITT - HIGHLY CONFIDENTIAL
for Weil?

A. I have a recollection that he worked for Weil. I can't be more specific as to why I have that recollection.

Q. Is it possible he was a Lehman intern?

A. It's possible.

Q. Were there Lehman interns in and around the premises when this work was being done?

MR. BERNSTEIN: Were you finished with your answer, your prior answer?

Q. I am sorry. If I interrupted, I apologize. Is there any --

A. Again, it is not because of recollection, but I would have been very surprised if we would have been using a Lehman intern for this. Again, given that I can't be more precise about who it was, things are possible, but it would surprise me if that was the case.

Q. Were there any junior-level Lehman personnel in and around the premises when this work was being done?

A. Again, I couldn't say with complete certainty, but I would be surprised if there were.

Q. Did you know everybody who was in and

LOWITT - HIGHLY CONFIDENTIAL
around the premises when this work was being done?

A. I obviously didn't know everybody who was involved.

Q. And had you met this young man at any time prior to seeing him when this work was being done?

A. I don't recall meeting him prior to that.

Q. I am going to put before you what has been marked at a previous deposition as Exhibit 200. Mr. Lowitt, I will ask you what I asked you with respect to other documents. Would you take a look through that document sufficiently to tell me whether you have seen it before.

A. I certainly saw it as part of my -- I have seen it before.

Q. Let me ask you this. Have you seen it before, apart from your preparation for the deposition?

A. I don't recall seeing it before that. It is just an interim work product, and when I recall seeing it is as part of my preparation for this deposition.

Q. Is that your handwriting on the

LOWITT - HIGHLY CONFIDENTIAL
document?

A. Part of this looks like my handwriting.

Q. Does that include the part that says "mark down," down below the asset line?

A. I can't be certain of that, but it may well be.

Q. Why do you say it may well be? Because it looks like your handwriting to you?

A. It looks like it could be my handwriting.

Q. And there are other annotations on the document by hand. Do you recognize any of them as your handwriting, the various numbers written on the page?

A. The numbers on the right side of the adjust column look like my handwriting. The ones to the left actually don't.

Q. When you say the adjust column, you are talking about the adjustment column both for assets and liabilities? There are two adjustment columns.

A. To the right of both of those columns.

Q. Under the word "asset," where it says

LOWITT - HIGHLY CONFIDENTIAL
40.31 and 8.4, that may not be your handwriting; is that right?

A. That is correct.

Q. Do you have any idea whose handwriting that is?

A. I do not.

Q. Do you recall making handwritten notations on the financial schedule as part of this iterative work?

A. I do.

Q. Why are you doing that?

A. We are really trying to keep track of what are the assets that Barclays is willing to purchase and at what price they would be willing to purchase it at that reflects a difference between our book value and what they would be willing to purchase at to reflect the size of the purchase and the market conditions.

Q. Take a look, if you would, sir, at the handwritten entries along the line for government and agencies on the asset side. Do you see that?

A. Yes.

Q. Is that a 42 or a 41 in your handwriting next to the adjustment column?

LOWITT - HIGHLY CONFIDENTIAL

A. It looks like 41 to me.

Q. Do you recall a point where Barclays offered 41 for government and agencies? I'm wondering why that number is higher than the number shown on the schedule.

A. I can't say. We may have found that the amount of governments and agencies was actually more than was on the schedule rather than a markup of any position.

Q. I asked you earlier before about -- that sort of vague question I put about the difference between the bottoms-up review and the top-down look. This sort of -- the question I am about to ask you relates to that.

Are the calculations being done on this schedule and whatever other calculations were done like that that day, are they meant to achieve the raw total number or are they meant to develop the components, add them up and see what the raw number will be?

A. I think it is supposed to cover both, which is supposed to say bottoms up, what does it look like, and then top down, what would we need to do to achieve the overall goal.

LOWITT - HIGHLY CONFIDENTIAL

Q. And the overall goal is the price that Barclays will pay and the difference between that and the value shown on Lehman's books, yes?

A. The difference between what Barclays are willing to pay versus the amount that's on Lehman's books which reflects, you know, the market price of those securities.

Q. When that agreement ultimately was made, whatever that difference was between the amount shown on the books and the amount Barclays would pay, was it expressed as a percentage of the amount shown on the books?

A. My recollection is that it was a dollar amount, not a percentage.

MR. GAFFEY: I need to take about ten minutes. Can we do that now? Is that convenient?

MR. BERNSTEIN: Sure.

(Recess)

BY MR. GAFFEY:

Q. Exhibit 200, sir, is before you. We were talking before the break about some of your annotations down the right-hand side of each of the adjustment columns.

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are going to be included. So I recall, for example, that a set of the mortgage assets were ones that Barclays said they weren't in a position to determine value so they would -- they would not include those.

And I know that there was ---if you are asking me do I know precisely the nature of that back and forth, I don't.

Q. I'll follow up on the -- the inclusion of assets point that you just told me about. My question goes more toward the number, the number that's finally agreed.

Is there a negotiation of that number, Barclays wants it to be a zillion dollars and Lehman wants it to be one, and they negotiate it? Do you know anything about the process that led to it being that number as opposed to any other number?

A. Again, I wasn't in the room where the negotiations were taking place, but what -- you know, what I was seeing was, you know, information that was coming in from the various businesses that indicated how much less Barclays would pay for certain assets than it was on the books of

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I direct your attention now to the words "mark down" at the bottom. Do you have any information, sir, as to why you wrote the words "mark down" on this document? Why you would have written the words "mark down" on this document?

A. I really don't have any recollection of why that would be the case. We were in this exercise both identifying which assets Barclays would be purchasing and the price they were comfortable paying, and that represented a -- you know, obviously a lower price than they were on the books for.

So it is possible that it has to do with that, but I don't recall writing this down specifically. So that would just be an interpretation of what I am seeing on the page.

Q. Without regard to that particular document, sir, in this process where the determination is being made as to the amount that this schedule finally will reflect when it is done, do you know if there is any back and forth between Lehman and Barclays as to the price?

A. I mean I know there is back and forth between Lehman and Barclays vis-a-vis what assets

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Lehman for, and that the combination of those things I think were being tracked and became part of the back and forth of the negotiation.

But I again wasn't party to those discussions, so I don't know how that was proceeding. But my sense was it was an iterative process between the parties.

Q. Do you have any -- not with respect to the particular document we have marked as Exhibit 200, but if you can use that to refresh your recollection, fine.

Do you have any recollection of where you sit in the process? You're writing down numbers on a financial statement. What are you keeping track of here?

A. I don't have a specific recollection, but I would imagine that what I was keeping track of was a combination of which assets Barclays would have or would not be purchasing because they were in a position to say what price they would be willing to purchase it for, so that was part of the screening exercise that we talked about earlier that Barclays was engaging with their counterparts at Lehman about.

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2 And then the difference between what
3 the assets were on Lehman's books for and as a
4 result of the bulk purchase and the volatility of
5 the marketplace, what Barclays would be willing to
6 pay for it.

7 **Q. Was it your understanding of the**
8 **transaction -- did you have an understanding that**
9 **after the transaction, Barclays planned to sell**
10 **these assets off in bulk?**

11 MR. HUME: Objection, lacks
12 foundation.

13 A. I had no idea what Barclays were
14 planning to do.

15 **Q. You knew you were going to go work at**
16 **Barclays. You knew they were taking what**
17 **businesses they were taking. Did you have an**
18 **understanding that what Barclays was planning to**
19 **do was operate the business as Lehman had?**

20 MR. BERNSTEIN: Objection, compound,
21 mischaracterizes his testimony.

22 You may answer.

23 A. Well, it seems like there were a
24 couple of things you were saying. I didn't know I
25 was going to work at Barclays because I didn't

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2 **Q. Do you know the basis upon which those**
3 **numbers were calculated?**

4 MR. BERNSTEIN: Objection, compound.

5 A. When you say the basis under which
6 they were calculated, I mean those were numbers
7 that -- the \$2 billion of comp I think was a
8 negotiated number between the parties.

9 The cure payment number was one that I
10 recall Martin Kelly was working on and that, you
11 know, it represented the best estimate that we had
12 of the -- those payables that would be assumed by
13 Barclays.

14 **Q. And was it, to your understanding, a**
15 **component of the transaction that the difference**
16 **between the amount Barclays would pay for the**
17 **assets and the amount for which -- and the**
18 **amount -- the value of those assets shown on**
19 **Lehman's books needed to exceed the amount of**
20 **liabilities assumed for cure and comp?**

21 MR. HUME: Objection, lacks
22 foundation.

23 A. I wasn't party to the discussions that
24 were occurring between sort of Lehman and Barclays
25 with regard to that. Again, you know, we spent a

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2 know that the deal was going to be completed. I
3 would -- I had had no discussions with Barclays
4 vis-a-vis how they were going to operate these
5 various businesses. So I am not in a position to
6 say whether they were anticipating selling off
7 these assets or not.

8 You know, what I would have known was
9 that if Barclays were going to maintain these on
10 their balance sheet, then they needed sort of
11 equity to support those assets and they needed
12 room within their leverage ratios, and I wouldn't
13 have known if they had an ability to absorb that
14 or not.

15 **Q. Can you go back to Exhibit 19. That's**
16 **the one without the handwritten notes.**

17 Now, Exhibit 19 shows on the liability
18 side entries for cure payment and comp on the
19 lower right-hand side. Do you see that?

20 A. I do.

21 **Q. And cure payment is put at**
22 **2.25 billion, and comp is put at 2 billion. Do**
23 **you see that?**

24 A. Yes. There isn't the dot on my copy,
25 but yes, 2.25 and 2 billion.

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2 lot of time on this, the difference between the
3 amount that things were on Lehman's books for and
4 the amount that Barclays were going to pay for,
5 for those assets. How they viewed their ability
6 to capture that difference, I just have no basis
7 to assess.

8 **Q. My question goes to something slightly**
9 **different, not Barclays' state of mind. It is**
10 **more toward did you hear any conversation, see any**
11 **documents, learn any facts at the time this**
12 **schedule was being prepared about that issue,**
13 **about whether the 5 billion was to cover the cost**
14 **of the assumed liabilities?**

15 A. I don't recall knowing anything
16 specific to that, and again, that would have been
17 something that would have been discussed between
18 Lehman and Barclays.

19 **Q. Did you ever have a discussion with**
20 **Mr. Kelly concerning whether the 5 billion was**
21 **needed to cover Barclays' expenses?**

22 A. I don't recall a conversation with
23 Martin about that.

24 (Exhibit 217, document Bates stamped
25 BCI-EX00115595 through 654 marked for

Page 98	Page 99
<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 identification, as of this date.)</p> <p>3 Q. Mr. Lowitt, I have put before you what</p> <p>4 we have marked as Exhibit 217, a document,</p> <p>5 multipage document bearing Bates number</p> <p>6 BCI-EX00115595 through 115654.</p> <p>7 I will ask you if you have any</p> <p>8 recollection of seeing this document before.</p> <p>9 A. I don't recall this document.</p> <p>10 Q. I will represent to you, sir, that</p> <p>11 this exhibit is put together in the manner in</p> <p>12 which it was produced to us by Barclays. In other</p> <p>13 words, the metadata put all of these pages</p> <p>14 together.</p> <p>15 Can you see any reason why the</p> <p>16 schedule that is the first page of the document</p> <p>17 would have been combined with the triparty</p> <p>18 collateral analysis that's attached to it?</p> <p>19 MR. BERNSTEIN: Objection, no</p> <p>20 foundation.</p> <p>21 MR. HUME: When you say, when you say</p> <p>22 the metadata -- you said the metadata put</p> <p>23 the pages together. I don't know what you</p> <p>24 mean.</p> <p>25 MR. GAFFEY: It appears from Barclays'</p>	<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 production that this is produced as a</p> <p>3 singular document.</p> <p>4 MR. HUME: Was it attached to an</p> <p>5 e-mail? This whole production came from an</p> <p>6 e-mail?</p> <p>7 MR. GAFFEY: No.</p> <p>8 MR. HUME: It was not attached to an</p> <p>9 e-mail?</p> <p>10 MR. GAFFEY: Not the way it was</p> <p>11 produced. It could well be a clerical</p> <p>12 issue, but I need to ask him about it.</p> <p>13 MR. BERNSTEIN: Can I ask a question?</p> <p>14 Who put the Bates numbers on this?</p> <p>15 MR. GAFFEY: Barclays.</p> <p>16 A. But I think I know what at least</p> <p>17 elements of this are. These are materials that as</p> <p>18 I was preparing for the deposition, as I looked</p> <p>19 through --</p> <p>20 MR. HUME: Can anyone give me a copy?</p> <p>21 I don't have a copy.</p> <p>22 Q. Go ahead.</p> <p>23 A. I was asked the question whether I had</p> <p>24 any materials that were associated with the period</p> <p>25 post the bankruptcy, and the first and second</p>
Page 100	Page 101
<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 schedules I believe were materials that I made</p> <p>3 available through my lawyers to Barclays. The</p> <p>4 subsequent materials, I'm not aware of what those</p> <p>5 would be.</p> <p>6 Q. Let me see if I can get a slightly</p> <p>7 clearer record on it. The first page is what you</p> <p>8 are referring to as the first schedule?</p> <p>9 A. Yes.</p> <p>10 Q. The second page entitled "Triparty</p> <p>11 Collateral Analysis" is the second.</p> <p>12 A. Yes.</p> <p>13 Q. But after that, you haven't seen the</p> <p>14 document before?</p> <p>15 A. I don't have a specific recollection</p> <p>16 of that, but it is possible that this -- I mean I</p> <p>17 would just be speculating what the long document</p> <p>18 is.</p> <p>19 Q. I don't want you to do that.</p> <p>20 You have seen the first page marked</p> <p>21 115595, yes?</p> <p>22 A. Yes.</p> <p>23 Q. You have seen that before?</p> <p>24 A. This page.</p> <p>25 Q. Right.</p>	<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. And you have seen the second page</p> <p>4 bearing the number in the lower right-hand corner</p> <p>5 115596?</p> <p>6 A. Correct.</p> <p>7 Q. And you don't know if you have seen</p> <p>8 the pages 115597 through the end of the document?</p> <p>9 A. Correct.</p> <p>10 Q. What's the second page, marked 115596?</p> <p>11 A. I believe that this is the collateral</p> <p>12 that was with the Fed that was part -- that was --</p> <p>13 as there was the necessity to unwind the Fed repo,</p> <p>14 this was the collateral that was returned to</p> <p>15 Lehman from the Fed.</p> <p>16 Q. Can you tell me what it means when it</p> <p>17 describes collateral value after margin reduction?</p> <p>18 A. This is a schedule from the Fed. It</p> <p>19 says, "Customer Lehman Brothers," top left.</p> <p>20 Q. Well, in the column where it says</p> <p>21 "effective margin," do you understand that to be</p> <p>22 describing the haircut in some fashion?</p> <p>23 MR. BERNSTEIN: No foundation.</p> <p>24 Objection, no foundation.</p> <p>25 A. It is not my schedule, so I don't</p>

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know.

Q. OK. All right, that's fine. Let's put the document aside.

I want to go back to the conversation you told me about a while ago that you had with Mr. Richie on the morning of Friday, September 19, about looking for additional sources of value.

A. Right.

Q. Did Mr. Richie say to you in sum or substance that it was critical to the deal closing to find those additional sources of value?

A. I don't recall Rich saying it was critical to the deal closing. But clearly it was important as an input into the discussions that were taking place between Barclays and Lehman.

Q. The conversation that you had with Mr. McDade, the first conversation that you had about -- as between the one with Mr. Richie, that you had about finding additional sources of collateral, was that in the early morning of Friday?

A. My recollection is somewhat hazy, but I believe it was early on Friday morning.

Q. Was there a meeting with Mr. McDade

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early on Friday morning that you attended along with others?

A. I have no recollection of that meeting, but I believe it is possible that it took place. I think Thursday night was also an all-nighter.

Q. It sounds like most of the week was all-nighters.

Was there a sense of urgency in finding the additional sources of value?

MR. BERNSTEIN: Objection, asked and answered.

A. It was obviously important for us to do that.

Q. When you spoke to Mr. Richie after you spoke to Mr. McDade, did Mr. Richie relay to you any conversations he had had with McDade about this issue?

A. No. I don't believe he did.

Q. Did you refer to your earlier conversation with Mr. McDade about the issue when you spoke to Mr. Richie?

A. I don't have a recollection of the details of, you know, my conversation with

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Mr. Richie other than that it was -- other than we needed to look to identify sources of additional value.

Q. Did you speak or otherwise communicate with Mr. McDade about the issue after you spoke to Richie?

A. I can't recall any additional conversations with Bart, but the progress that we were making in identifying sources of value is something that I would have been communicating to Bart through the course of the day.

Q. Now, there came a point during the course of the day where Bart went down to the bankruptcy court, correct?

A. On the Friday, yes.

Q. And approximately when during the day was that, morning or afternoon?

A. I don't know exactly when Bart went down, but I would assume it was in the afternoon.

Q. And the hearing went on until the wee hours of the morning on the 20th. It went past midnight, correct?

A. Don't know with certainty, but if you say that was what happened, I'm sure that's right.

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Q. Do you know if Mr. McDade was down there for the entire hearing?

A. Again, I wasn't there so I don't know if Bart was there for the whole time.

Q. Do you know if as part of this project to identify additional sources of collateral, do you know if during the work related to that project anyone sent assets over to Barclays on the Friday?

MR. BERNSTEIN: Objection, vague and ambiguous.

A. I don't have a recollection.

Q. Did it ever come to your attention that that happened, that additional sources of value that were found during the Friday project were sent over to Barclays on the Friday?

MR. BERNSTEIN: Same objection.

A. I don't have a recollection.

Q. Was part of your -- was one of the goals of that work on the Friday to send assets to Barclays on the Friday, Friday, the 19th?

MR. BERNSTEIN: Same objections.

A. I don't have a recollection of that.

Q. Putting before you what was marked at

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2 **a prior deposition as Exhibit 20. Can you take a**
3 **look through the document and tell me whether you**
4 **have seen it before?**

5 MR. BERNSTEIN: Just so the record is
6 clear, when you are showing him documents
7 like this, you mean the part after "unknown"
8 and the 2009 date?

9 MR. GAFFEY: Yes.

10 **Q. Do you understand what he is referring**
11 **to? Up at the top it says "unknown" and then a**
12 **date. Ignore that. That's imprinted on the**
13 **document by our vendor. Below that is a copy of**
14 **the document I want to ask you about.**

15 A. Again, only in the preparation for the
16 deposition.

17 **Q. You note that the document is an**
18 **e-mail addressed to you and Paolo Tonucci from**
19 **Martin Kelly. That's the only e-mail on the**
20 **chain.**

21 A. I can see that, yes.

22 **Q. Do you have a recollection of seeing**
23 **this e-mail from Mr. Kelly at or about the time it**
24 **is dated, September 16, 5:10 a.m.?**

25 A. I don't have a recollection of it

1 **LOWITT - HIGHLY CONFIDENTIAL**
2 specifically.

3 **Q. Do you have any recollection of**
4 **communicating in any way with Mr. Kelly in the**
5 **early morning hours of September 16 about the deal**
6 **terms?**

7 A. I don't have a recollection of
8 speaking with Mr. Kelly about anything
9 specifically, but speculatively, I would imagine
10 that I would have spoken with him about what was
11 our understanding of what was emerging.

12 **Q. And looking at the document in**
13 **preparation for your testimony today, did that**
14 **have any -- did that refresh your recollection in**
15 **any way about communications with Mr. Kelly on the**
16 **early -- in the early morning of September 16?**

17 A. It did not.

18 **Q. Does looking at that now refresh your**
19 **recollection?**

20 A. No, it doesn't refresh the
21 recollection.

22 **Q. Take a look, if you would, at the next**
23 **e-mail up in the chain, which appears to be from**
24 **you to Martin Kelly, copying Mr. Tonucci. Do you**
25 **see that?**

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2 A. Yes.

3 **Q. And in it, it says, "You are a hero.**
4 **Well done." Do you see that?**

5 A. Yes.

6 **Q. Do you have any recollection as to why**
7 **you would respond to Mr. Kelly and describe him as**
8 **a hero?**

9 A. I think the reason I would imagine
10 that I was doing that, he had worked all night
11 after an extremely tumultuous week around this
12 deal, and that he had -- and it was part of just
13 showing appreciation for that.

14 **Q. Do you have -- he was one of your**
15 **direct reports, is that right, Martin Kelly?**

16 A. That is correct.

17 **Q. Do you have an understanding of -- can**
18 **you describe to me what it was that Martin Kelly**
19 **was doing overnight from Monday to Tuesday? What**
20 **were his tasks?**

21 MR. BERNSTEIN: Objection, no
22 foundation and compound.

23 A. I know some of the things that Martin
24 was doing. Martin was helping to sort of estimate
25 some of the numbers that were going into the

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2 transaction, like the cure payment, and as the
3 financial controller, he was a key participant in
4 determining what some of the items in the
5 transaction were, and as is clear from the e-mail,
6 he had a good sense of what many of the key
7 elements of the transaction included.

8 **Q. Is that the extent of your**
9 **recollection about that?**

10 A. That's my recollection of that morning
11 and my interactions with Martin and his role.

12 **Q. You referred before to some**
13 **mortgage -- some mortgage securities that Barclays**
14 **did not want.**

15 A. Correct.

16 **Q. Can you describe them in any more**
17 **detail?**

18 A. Only that they were sort of
19 residential mortgages. But no, I can't be more
20 specific. But as you see in the e-mail, you know,
21 it talks about \$3.6 billion of Resi assets left
22 behind. I believe that's the -- those are the
23 same assets I was referring to before.

24 **Q. Did you have an understanding in the**
25 **early part of the week, the Monday, Tuesday, that**

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the agreement that was reached had 50 percent of the Resis going to Barclays and 50 percent going to Lehman, remaining with Lehman?

A. I don't recall what the percentages were, but there were clearly assets that were staying and assets that were going.

Q. I put before you, Mr. Lowitt, what has been marked at a prior deposition as Exhibit 10. I would ask you to take a look through the document and tell me whether you have a recollection of seeing it before.

A. No, I don't recall seeing this before.

Q. Some of the e-mails reflect on this -- well, the e-mail at the top appears to be an e-mail from you to Jerry Reilly and Eric Felder. Do you see that?

A. Yes, I do.

Q. And in that piece of the e-mail chain, it says "that's my understanding, but check with whoever drafted the purchase agreement, Ian," and that's responding to a question about whether certain Resis and auction securities are going to be included, right?

A. That seems to be the sense of the

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chain of e-mails.

Q. I want you to get the sense of it because my question goes to your apparent direction to Reilly and Felder to check with whoever drafted the purchase agreement. Do you know who drafted the purchase agreement?

A. It would be -- I don't know. I would assume it was lawyers from Weil working together with maybe some lawyers from Lehman.

Q. You are assuming it because that's what -- do you have any factual basis for the assumption or it is an assumption?

A. It's an assumption.

Q. And do you have any knowledge, sir, of what facts were given to whoever drafted the purchase agreement about the business terms that had been agreed?

Let me make that question simpler. Do you know what the drafters were told about the terms of the deal?

A. I do not.

Q. And this e-mail appears to indicate that at least on September 17 at 12:34 p.m., which is the time of the e-mail from you to Reilly and

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Felder, you had not seen the purchase agreement; is that correct?

MR. BERNSTEIN: You are asking him if that's what the e-mail indicates or --

MR. GAFFEY: Actually let me ask if it refreshes his recollection as to the first time he saw the asset purchase agreement.

A. I don't believe I had seen the purchase agreement.

Q. Further down in that e-mail chain, there is an e-mail from Eric Felder to a number of people and a cc to a number of people including you. And Mr. Felder wrote, "I think the Barclays folks picked the assets. I recall them saying they didn't want the auction securities, but I wasn't in all the meetings."

Do you see that?

A. I do.

Q. Was it your understanding that the Barclays folks picked the assets?

A. The Barclays folks determined which assets they were willing to purchase and which assets they didn't want to purchase. So in that sense, the Barclays folks picked the assets.

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Q. Was it your understanding that Barclays picked the assets it was willing to purchase based on the quality of those assets they were --

MR. HUME: Objection, lacks foundation.

A. I couldn't say why they chose to purchase certain assets and not others.

Q. Let me go back to what may have been expressed to you at the time by others. That's really what I am asking. Did anybody express to you that Barclays was picking assets based on the quality of the assets?

A. I have no recollection that that was the basis. It would have been what they -- how they decided which assets they wanted to purchase would have been driven by their own positions and not wanting to get overconcentrated, as well as, you know, their view of how easy it was to assess what was an appropriate mark on those.

Q. Take a look, if you would, sir, at the second page of the exhibit. The earliest e-mail in this e-mail chain is from -- I'll probably murder this -- Gilles Aublin to Jerry Reilly, cc

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2 **Clement Bernard, dated September 17, 11:53 a.m.**
3 **And it is asking in the last line**
4 **whether there are "guidelines to exclude some**
5 **assets that are deemed to be more toxic (for**
6 **example, we have 2.8 billion of ARS, in high grade**
7 **and muni combined)."**

8 **Do you see that?**

9 A. I do.

10 **Q. Does that refresh your recollection as**
11 **to whether there were standards or guidelines**
12 **governing assets Barclays had said it would**
13 **purchase as opposed to those it said it would not?**

14 A. I wasn't aware of any guidelines. I
15 know there were meetings that took place between
16 managers at Barclays and managers at Lehman so
17 that Barclays could make an assessment about
18 whether they were willing to purchase certain
19 assets, with an understanding that there were some
20 assets in the portfolio that for reasons that made
21 sense to them they chose not to want to purchase.

22 **Q. Mr. Lowitt, we talked earlier today in**
23 **somewhat broad terms about the repo, and I would**
24 **like to return to that topic and that segment of**
25 **the week, as it were.**

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2 **As a consequence, on the Thursday,**
3 **there was a huge effort under way to move the**
4 **collateral back from -- move -- to move the**
5 **collateral from JP Morgan, who was the triparty**
6 **agent for Lehman, to BONY, that was the triparty**
7 **agent for Barclays, with Chase obviously concerned**
8 **through this whole process about their own**
9 **exposures to Lehman Brothers.**

10 The effect of this was that through
11 the Thursday, this repo was now effected with
12 Barclays rather than with the Fed, so Barclays
13 needed to come up with, in round numbers, the
14 \$45 billion of cash to buy the Fed out of their
15 repo position so the Fed no longer had a claim on
16 that collateral and received the cash for that
17 collateral.

18 That then became a new and very
19 different element, because there was no way that
20 LBI could get out of that repo position. It
21 couldn't generate \$45 billion to give to Barclays
22 to get back its collateral. The repo was now an
23 imposed element on whatever deal was going to get
24 consummated between LBI and Barclays.

25 **Q. Now, when the repo was put into**

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2 A. Sure.

3 **Q. Give me as best you can a description**
4 **of how it came to be that the repo with Barclays**
5 **was necessary and agreed. What caused the repo to**
6 **come into being?**

7 A. I think the context for it was the
8 extreme markets disruption that was being
9 experienced that week, where, as you recall, AIG
10 was -- received assistance on the Tuesday. There
11 was big increases in credit default swaps of many
12 other firms.

13 The Fed, for reasons of its own,
14 decided that it didn't want to have ongoing
15 exposure to LBI, and although I wasn't party to
16 any of the discussions, you know, communicated to
17 Barclays that they wanted Barclays to take them
18 out of their repo with Lehman Brothers.

19 I was asked to attend the meeting with
20 the Fed, together with people at Barclays, to talk
21 through how that was going to get effected, but it
22 was clear that the Fed was very keen on being
23 taken out of that risk so that they would
24 either -- for reasons that made sense to them. I
25 can speculate on what those were.

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2 **place -- was it put into place on the Thursday,**
3 **the 18th?**

4 A. That's my recollection, that we met
5 with the Fed on the Wednesday and Thursday, and
6 the Thursday evening was when the repo was unwound
7 with the Fed and a new repo was put in place with
8 Barclays.

9 **Q. Is it your understanding, sir, as the**
10 **deal ultimately came to be implemented, one**
11 **element of it was that Lehman -- that the repo was**
12 **extinguished, it was terminated?**

13 MR. HUME: Objection, vague and
14 ambiguous, calls for a legal conclusion.

15 **Q. Can you answer my question.**

16 A. Can you repeat the question.
17 (Record read)

18 A. I mean what was clear to me was that
19 Barclays kept the collateral and LBI kept the
20 cash. If that's the equivalent of extinguishing
21 the repo, yes, it extinguished the repo.

22 What really was happening, Barclays
23 accepted the collateral that was in the repo trade
24 and they kept that collateral and LBI kept the
25 cash.

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Q. The collateral included the haircut over and above the cash amount?

A. It included the collateral -- the amount of cash was less than the collateral reflecting the standard financing haircuts on those collateral terms, but yes.

Q. Yes, it kept the difference?

A. It got the collateral that was part of the repo. They retained that. And they didn't get the cash back from LBI. That cash obviously had gone to the Fed to take the Fed out of its repo position.

Q. Do you know when during the week it was determined that that's how the repo would be resolved, that Barclays would keep the collateral and Lehman would keep the cash?

A. It was definitely part of -- I wasn't party to the negotiating sessions, but it was definitely part of the discussions that were occurring on the Friday.

Q. The discussions between whom and whom on the Friday?

A. Well, we were looking to see how the deal -- within finance, there was an effort to

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determine what would be delivered to Barclays under the deal, whatever the deal was, and the repo as a new fact in the situation allowed or it enabled or became a basis for the new transaction.

Q. I think we might be at cross purposes here. My question to you, sir, when you referred to some discussions that were occurring on the Friday, I asked you between whom and whom. What people were involved in these discussions?

A. I don't have specific recollections of the discussions. I do know that the people in finance, so that would have included Jerry Reilly, myself, would have been discussing what collateral was going to be delivered to Barclays and how that was going to be effected.

Actually, could I take a break, please?

Q. Sure.

(Luncheon recess)

(Continued on next page)

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AFTERNOON SESSION

1:10 p.m.

BY MR. GAFFEY:

Q. Mr. Lowitt, I have put before you what we have previously marked as Deposition Exhibit 5. Take a look at the document and tell me whether you recognize it.

A. I don't recognize the e-mail, but I am obviously aware of the people who are referenced in it.

Q. There is a reference in the e-mail, which is from you to Chris O'Meara, to -- you say as follows: "We worked all night to find what inventory we have available to sell. Meet me in Martin's office. Jerry has the details. Ian."

Do you see that?

A. I do.

Q. Do you recall working all night from Thursday to Friday to find inventory to sell?

A. I do.

Q. Is that part of this project we were talking about before the lunch break of looking for additional value for Barclays?

A. No. This was in the construct of the

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earlier transaction which was around our ability to insure that the collateral that we were selling to Barclays was collateral that was unencumbered and available.

Q. When you're referring to the collateral that was going to Barclays, is that the collateral in the repo?

A. It was the collateral that was conceptually referenced on the earlier schedules, the assets that would have been described in that schedule. So we were -- it wasn't thinking about the repo specifically. It was, you know, what assets did we have where we knew we had possession of those so that we could make sure that they went to Barclays, some portion of which was the repo, but it could have been in other inventory as well.

Q. And is that because during the week, starting on Tuesday and now we are at Friday, the body of available collateral had shrunk because of issues of possession or title?

A. Yes. And the fact that, you know, some of it was being financed and that the various counterparties wouldn't have returned it, and there was that series of issues, operationalizing

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2 the delivery of collateral.

3 **Q. And do you have a sense of how much**
4 **that body of collateral had shrunk from Tuesday to**
5 **Friday?**

6 A. I don't have a recollection of how
7 much.

8 **Q. Do you remember if on Friday, whether**
9 **you remember the number today or not, do you**
10 **remember if on Friday you had a determination of**
11 **what the value was of what was available to give**
12 **to Barclays?**

13 A. I know we worked Thursday to develop a
14 point of view of what collateral we did have that
15 we could deliver as part of the transaction. I
16 can't be more specific about the amount, and I
17 would simply be speculating as to how much it was
18 less than the amount that was available on Monday.

19 **Q. But again without regard to the**
20 **particular number, and it is a while ago, you do**
21 **remember that there was a number of some kind, if**
22 **you can't remember it today? It was quantified in**
23 **some way?**

24 A. There were a series of schedules that
25 identified specific pieces of collateral that

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2 says Bart asked some Lehman folks to meet with
3 Alex.

4 **Q. I beg your pardon, that's absolutely**
5 **right, that's absolutely right.**

6 **Do you know why Bart wanted LEH folks**
7 **to meet with Alex Kirk about the Barclays deal**
8 **that morning?**

9 A. I don't know. Again, the sense of the
10 e-mail is that it is associated with the inventory
11 that was being sold as part of the transaction,
12 and the work that we had done the previous evening
13 was around determining what it was that we had
14 that was available to sell.

15 So it is -- they seem linked to me.

16 **Q. Is that determination with respect to**
17 **inventory separate from the other issue we were**
18 **talking about before, the 15c3 and unencumbered**
19 **collateral?**

20 A. It is separate in the sense that --
21 they are different issues to my mind. So there
22 was one which was what was the inventory that we
23 had that was available to us that we could include
24 in a transaction. So that was one thing.

25 And then separately there is a

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2 based on the information that we had, which was
3 hazy because of data issues with Chase and others,
4 that we were confident was collateral we could
5 have delivered into the deal.

6 **Q. And there is a reference in the lower**
7 **e-mail, that is the earlier e-mail from Chris**
8 **O'Meara to you at 6:24 in the morning on**
9 **September 19, "Ian, Bart asked some LEH folks to**
10 **meet with Alex Kirk about the Barclays deal at**
11 **7 a.m. today. We will get him up to speed on**
12 **where we stand, especially on the matter of**
13 **inventory being sold. We will then coordinate**
14 **with the LEH business heads to ensure they are in**
15 **agreement, FYIC."**

16 **Focusing your attention on that**
17 **language, sir, was there a meeting with Alex Kirk**
18 **in the early morning of September 19?**

19 A. I don't recall.

20 **Q. Do you know if there was a meeting --**
21 **well, this suggests that you had a conversation or**
22 **a communication of some kind with Bart McDade**
23 **prior to 6:24 on September 19. Does it refresh**
24 **your recollection as to --**

25 A. No, I actually don't see that in -- it

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2 question of sort of unencumbered collateral, which
3 would have overlapped with this but was different
4 from it, and I think the exercise that we
5 undertook on the Thursday evening was to determine
6 what was the inventory that was unencumbered that
7 we would be able to sell to Barclays.

8 **Q. I think -- I always get these two**
9 **numbers backwards. We talked before about a**
10 **\$1.9 billion number, an approximately \$2 billion**
11 **number as between the 15c3 and the unencumbered**
12 **collateral?**

13 A. No, I think we said unencumbered
14 collateral was around \$2 billion and the 15c3 was
15 between 700 and 800 million.

16 **Q. Those are the two I mixed up. Was**
17 **the -- did the unencumbered collateral overlap the**
18 **inventory that is being discussed in Exhibit 5?**

19 MR. HUME: Objection, lacks
20 foundation.

21 A. Really they were just different
22 things. To the extent that we discovered
23 inventory that was unencumbered and could be
24 delivered into the deal and wasn't part of the
25 repo, then it would be available as unencumbered

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2 collateral to deliver into the transaction.

3 **Q. And was property of that character**
4 **added to the body of assets that were going to be**
5 **traded to Barclays? Not in the repo but available**
6 **for transfer?**

7 A. Again, this exercise was associated
8 with trying to satisfy the structure that was
9 existing prior to the repo, even though it was
10 done on the Thursday evening. I think what
11 emerged through Friday was that the repo itself
12 was going to be the basis of the transaction.

13 **Q. That brings me back to the search for**
14 **additional value, if the repo itself was going to**
15 **be the basis for the transaction. The 15c3 and**
16 **the unencumbered collateral were not within the**
17 **repo, correct?**

18 MR. BERNSTEIN: Objection, form,
19 compound.

20 Go ahead.

21 A. The transaction clearly included more
22 than just the repo. It included other elements as
23 well. It included the repo, it included 15c3 and
24 unencumbered collateral. It included the
25 exchanged traded derivatives. It included a

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2 of the e-mails, from Ian Lowitt to Gerard Reilly,
3 September 17, 9:29 p.m. In it you write, the
4 subject is, "Are we set up to do the marking of
5 the positions? Ian."

6 A. Yup.

7 **Q. And then above that is an e-mail from**
8 **you to Gerard Reilly forwarding that e-mail and**
9 **adding, "What I meant was for BarCap to mark the**
10 **positions further? Ian." Do you see that?**

11 A. I do.

12 **Q. What did you mean when you wrote that**
13 **to Mr. Reilly, asking if we were set up to do the**
14 **marking of positions and with the explanatory note**
15 **about BarCap?**

16 A. Either -- what I understand as I read
17 it now is that we were determining what was the
18 price that BarCap were willing to pay for the
19 assets of the -- that reflected the discount for
20 the -- to use your word discount -- the delta
21 between what they were on our books for and what
22 they would buy it for, given the size of the
23 purchase, as well as for the volatility of the
24 underlying positions.

25 **Q. So can you tell me why negotiations**

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2 variety of other things.

3 So the repo was an element of the
4 transaction, obviously a big part of the
5 transaction, but it wasn't the sole part of the
6 transaction.

7 **Q. Was there a time, Mr. Lowitt, during**
8 **the week when Barclays' personnel were involved in**
9 **marking Lehman positions?**

10 A. Marking Lehman positions for the
11 purpose of --

12 **Q. You would have to tell me.**

13 A. I mean I think there were Barclays
14 personnel involved in looking at our assets and
15 determining what they would be willing to purchase
16 it for, but they were not marking our positions
17 for the purposes of our books and records.

18 **Q. I show you what was marked at a prior**
19 **deposition as Exhibit 23. I ask you to take a**
20 **look at that.**

21 **Do you recall seeing this e-mail chain**
22 **before?**

23 A. Not before preparing for the
24 deposition.

25 **Q. Take a look, please, at the earliest**

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2 **were continuing on September 17 about that topic?**

3 A. I don't know whether they were
4 negotiations. We were trying to determine what
5 was the way in which we would effect the
6 transaction, which was to deliver a series of
7 assets to Barclays at prices that they were
8 comfortable purchasing them at.

9 **Q. Had the prices not been determined in**
10 **the exercise on Tuesday with the development of**
11 **the financial schedule we looked at before?**

12 A. They weren't developed at the level
13 of -- I don't know the extent to which they were
14 developed, but we weren't aware of information
15 that was at an asset-by-asset level which would
16 have been necessary to effect the transaction.

17 **Q. And was that process being conducted**
18 **on an asset-by-asset level on the 17th? Is that**
19 **what you are referring to here?**

20 A. On the 17th we were believing what we
21 needed to do was to mark the positions to a level
22 that was consistent with what Barclays were
23 willing to purchase them at.

24 **Q. Did that happen?**

25 A. I don't believe that it did.

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Q. Why not?

A. I think the transaction changed when the repo was effected, and because the repo was effected, the transaction itself changed.

Q. Was the process of marking the positions to a level that was consistent with what Barclays were willing to purchase them at referred to as the conversion?

A. I don't believe so. The conversion -- can you be more precise about the conversion.

Q. I will show you a document in a little while about that.

A. I would imagine the conversion is about converting the assets from the Fed to Barclays, would be my surmise about what that means.

This was not an exercise that we actually undertook.

Q. And --

MR. BERNSTEIN: Can we be clear for the record, when you said this was not an exercise, I don't want to suggest an answer to you, but you might want to explain "this," because I'm not sure if you are

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willing to pay for those assets.

Q. Now, further up, the next one up, September 17, 9:41 p.m., Mr. Reilly writes to you, "I went through all docs and did not see reference to the price haircut. If we want conservative marks to reflect block nature, we need to know how much and then can allocate to most logical assets."

Could you explain that to me?

A. I think what Jerry is describing here is the need to reflect in the assets that we are -- we would be sending to Barclays a mark that reflected what they were willing to pay for the assets and that there needed to be a process of reflecting that not at the level of the gross asset category but at the level of individual assets.

Q. Now, do I understand that to mean that the price haircut would be determined and then the assets would be identified to which it would be applied?

MR. BERNSTEIN: Objection to the form.

A. Yeah, I didn't see it in that way. I think it was trying to insure what we were doing

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talking about the conversion or piece of paper that you are holding in your hand.

Q. My question exactly.

A. I am referring to what is described in this e-mail as having Barclays' traders come to Lehman and engage in a marking process.

MR. BERNSTEIN: Just for the record, this e-mail is Exhibit 23, correct?

THE WITNESS: That is correct.

Q. Further up in that e-mail chain, there is an e-mail from Mr. Reilly to you, also September 17, at 9:35 p.m., responding to yours, saying "Ian, I told business guys they must get counterparts at BarCap comfortable tomorrow night by our front-end systems. We will not have time to do Friday. We are going to send last night's assets and marks over so they can see mix and marks."

What did you understand Mr. Reilly to be conveying to you with that e-mail?

A. That we needed to have the Barclays' traders comfortable with the assets that they were purchasing and marks that they were going to buy them at that reflected a price that they were

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at an asset-by-asset level was consistent with what was in the agreement.

Q. And is that -- when you say in the agreement, is that what you understood Mr. Reilly to be referring to when he referred to the docs?

A. Yeah, the documents describing what the contract was.

Q. You respond to Mr. Reilly by saying, "Since not in contract, hard to see what to" -- it says D-P but I will read that as "do. Ian." Do you see that?

A. I do.

Q. Had you, by September 18, referred the -- now reviewed the contract?

A. I had not.

Q. Well, how would you know, Mr. Lowitt, what was and what was not in the contract?

A. I didn't know what was in and what wasn't in the contract. I had a sense of what the terms were, but I hadn't reviewed it in the contract.

Q. I note that you don't say in your e-mail to Mr. Reilly I don't know what the contract says. You say it's not in the contract.

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Do you see that?

A. I do.

Q. Does that suggest to you that you had read the contract and seen no reference to the price haircut?

MR. BERNSTEIN: Objection. Asked and answered.

A. I don't read it as such. I said if -- it doesn't -- when I say "since not in contract," it doesn't mean that I knew that independently. It is referencing what Jerry has said about that the documents didn't include it.

Q. So when you were saying to Mr. Reilly that it was hard to see what to do, what were you communicating?

A. It was hard to see how we were going to identify those assets that Barclays were going to purchase and what the pricing on each of those individual assets were going to be.

Q. And it was hard to see because, at least if Mr. Reilly's right that there is no reference to the price haircut, it doesn't give any guidance?

MR. BERNSTEIN: Objection to form.

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was now in place, that the repo represented -- was part of what any new transaction was going to be and that what you had in the repo addressed many of the operational questions that we were not sure how to address, which was which of the assets Barclays was going to acquire, because clearly the ones in the repo became the basis of what they were going to acquire, as well as what was the financing haircut associated with that.

Q. Mr. Lowitt, I am putting before you what has previously been marked as Deposition Exhibit 127. Have you seen that document before?

A. Again, I don't recall seeing this before the preparation for the deposition.

Q. Take a scan through it sufficient to familiarize yourself with it and let me know when you have done that.

A. OK.

Q. I would -- directing your attention to the earliest message on the page, the one at the bottom, from Gerard Reilly to you, Michael Gelband, copy Paolo Tonucci and Martin Kelly, September 18th, 2008 at 6:04 a.m.

And in that e-mail entitled "Open

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Q. Is that right?

A. It is hard because, as Jerry says, "went through the docs and do not see reference to price haircut."

Q. So absent a reference in the documents, you don't know how to apply the price haircut? Is that what you are saying?

A. It is hard to determine how we are going to identify the series of assets that are part of the transaction and at what price those are going to be marked at and that Barclays is going to purchase them at.

Q. Now, did there come a time, Mr. Lowitt, where you understood that -- withdrawn.

Did there come a time when it was suggested to you that the best means of delivering the discount to Barclays was by defaulting on the repo?

A. Again, I don't -- I don't agree with the characterization of the best way to deliver the discount. I think what was clear on the Friday, in part because of the difficulties that we have talked about, but also because the repo

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Issues on Deal," Mr. Reilly writes -- I'm down at paragraph 3 -- "Not clear on the amount of block discount or how we make it happen. Defaulting on repo could be the best, as discount could be taken from haircut. If not that, then we need to give business an allocation of block discount so they can mark down the books tonight. Does that create a problem, as it could tip the broker early? Would we rather have that be in the sale price tomorrow?"

Do you see that portion?

A. I do.

Q. What did you understand Mr. Reilly to be suggesting in this e-mail when he said, defaulting on repo could be the best as the discount could be taken from the haircut?

A. Again, I don't have a recollection of this on the Thursday, but in reading the e-mail here, you know, what Jerry is suggesting is that the repo transaction is a way in which we could deliver collateral to Barclays and that as a basic concept, the financing haircut is a similar concept to the item that we were talking about earlier, which is Barclays' buying collateral for

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2 less than the marks to reflect the size of their
3 purchase and the volatility of the underlying
4 assets.

5 **Q. So to put that at least in my layman's**
6 **terms, that would be using the haircut on the repo**
7 **as a replacement for the markdown of the value**
8 **shown on the books?**

9 MR. BERNSTEIN: Objection,
10 mischaracterizes his testimony.

11 A. What I would say is not how I would
12 think of it as a replacement. They were -- they
13 are comparable concepts, but the repo transaction
14 was, again, a way in which we could deliver
15 specific assets to Barclays at a specific price,
16 which is what the original deal intended, but it
17 was a different thing.

18 **Q. Well, if the repo is used to deliver**
19 **assets to Barclays at a specific price and**
20 **Barclays gave \$45 billion and received 50 billion**
21 **in collateral, does that mean Barclays bought**
22 **50 billion in collateral for \$45 billion?**

23 A. If the -- if they received all their
24 collateral and that was the cash that came to the
25 firm, then, yes, they received \$49 billion of

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2 but --

3 **Q. Apart from meeting with your lawyers,**
4 **did you talk to anyone about the fact that your**
5 **deposition was being taken today?**

6 A. There are some people in the wealth
7 division that are aware that I am being deposed.

8 **Q. Did you talk to them for any reason**
9 **other than to explain your absence? Did you talk**
10 **to them about the substance of what you would be**
11 **testifying about?**

12 A. No, no.

13 **Q. Have you spoken to anyone else who has**
14 **had their deposition taken in this matter?**

15 MR. BERNSTEIN: I presume you mean
16 about the deposition?

17 MR. GAFFEY: Yeah, sure.

18 MR. BERNSTEIN: As opposed to at some
19 point in his life about something else.

20 MR. GAFFEY: Yes. But "no" would
21 cover both.

22 A. But I meant about the deposition.

23 **Q. OK. Now, up at the top of this,**
24 **Mr. Felder writes to Reilly, Lowitt, Gelband, copy**
25 **Kelly and Lee, "The Barclays guys chose the**

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2 collateral -- \$50 billion of collateral for the
3 cash.

4 **Q. Further up in the e-mail, you write to**
5 **Mr. Reilly, Gelband, with copies to Kelly, Felder**
6 **and Lee, "Jerry, please set up a meeting first**
7 **thing this morning to work through these issues**
8 **with Mike, Eric and Hyung."**

9 A. That's Hyung Lee.

10 **Q. "Probably want Martin as well, and how**
11 **to approach. Must be a huge priority for today.**
12 **Ian."**

13 **Why was this a huge priority for that**
14 **day?**

15 A. Well, we needed to determine how we
16 would be able to deliver collateral that was
17 specified and what Barclays would be paying for
18 that collateral.

19 **Q. And the Martin that you are referring**
20 **to is Martin Kelly?**

21 A. I believe it would be Martin Kelly
22 from the context.

23 **Q. Do you still work with Martin Kelly on**
24 **a day-to-day basis?**

25 A. I do not. We speak occasionally,

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2 assets. We did not have anything to do with it."

3 **In the context of the e-mails below,**
4 **do you have an understanding of what Mr. Felder is**
5 **communicating here?**

6 A. He is saying that Barclays' folks, my
7 understanding would be that what the -- that the
8 Barclays folks were the ones who decided which
9 assets they wanted to purchase and which ones they
10 didn't, so the selection of which assets would be
11 included was not something driven by the Lehman
12 folks but by the Barclays folks.

13 **Q. I am trying to put it in context of**
14 **the e-mail. Let me suggest it might be a response**
15 **to paragraph 1 in the bottom e-mail, about whether**
16 **or not auction rates are included. I don't want**
17 **you to speculate, but I am wondering if you have**
18 **any knowledge of what it is Mr. Felder meant when**
19 **he wrote this.**

20 A. I don't know what Mr. Felder meant
21 when he wrote this.

22 **Q. Mr. Lowitt, you have before you what**
23 **has previously been marked as Deposition**
24 **Exhibit 14. And with the exclusion we talked**
25 **about before, the top two lines that say "unknown**

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2 **and sent," have you seen the text of this e-mail**
3 **before?**

4 A. Yeah, I don't have a recollection of
5 it besides in the preparation for the deposition.

6 **Q. In the bottom e-mail, from you to**
7 **Gelband, Kirk and Beldner, copies to Tonucci,**
8 **Reilly and Kelly, you say, "Today was very bad**
9 **with very large number of surprises, increased**
10 **requirement of 7 or so billion. Cannot get**
11 **through tomorrow if not tighter. Not sure what to**
12 **suggest other than someone makes ensuring great**
13 **discipline the number one priority. Let's huddle**
14 **in the morning to see the best way forward. Also**
15 **need to shrink matchbook, which as of yesterday**
16 **was much larger than expected. Jerry and Martin**
17 **have details. Ian."**

18 What were you referring to when you
19 said increased requirement of 7 or so billion?

20 A. You see here the subject says funding
21 tomorrow?

22 **Q. Yes.**

23 A. This was referring to the funding
24 position of the firm on the Wednesday evening
25 where per the e-mail, there was a number of

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2 **Q. When you say shrink the matchbook,**
3 **what does that mean? I guess you need to explain**
4 **the matchbook term.**

5 A. It means you could be longer Treasury
6 and shorter Treasury, and shrink it means -- you
7 know, one is a repo, one is a reverse repo, so
8 when you repo the collateral out, so shrinking the
9 matchbook's essentially relating to reducing the
10 number of repos of collateral where you hold the
11 collateral and reducing the number of reverse
12 repos where you reverse the collateral in.
13 Normally -- that's what it would be.

14 **Q. Could you -- in front of you there**
15 **ought to be Exhibit 127 that we just looked at a**
16 **moment ago. It is the e-mail, not clear about the**
17 **amount of block discount.**

18 A. Yes, I see that.

19 **Q. A few more questions about that. Down**
20 **in paragraph 3, when Mr. Reilly writes, "Does that**
21 **create a problem, as it could tip the broker**
22 **early," what did you understand him to mean?**

23 A. Again, I don't have a recollection of
24 what that means. Again, as I sort of speculate
25 from the context, it is you need broker -- the

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2 surprises vis-a-vis the funding, which I think
3 would have referred to the fact that people we
4 thought were going to roll secured funding didn't,
5 or some of the term repo that we expected to stay
6 on as term had -- wasn't available to us, which
7 increased the funding requirement that we had to 7
8 or so billion dollars. So this was referring to
9 the funding position of the firm.

10 When it says, "cannot get through
11 tomorrow if not tighter," it is saying that our
12 ability to fund the firm on Thursday requires us
13 to be extremely disciplined around financing and
14 funding in one or two, ensuring that the senior
15 people in fixed income were aware of just how
16 important this was and how our funding position
17 was deteriorating.

18 **Q. And what are you referring to when you**
19 **talk about the need to shrink the matchbook?**

20 A. Well, the matchbook, there is a book
21 which has -- you know, assets and liabilities
22 should be matched. It was consuming some amount
23 of cash. So shrinking the matchbook was one of
24 the ways we wanted to improve the liquidity
25 position of the firm.

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2 broker-dealer needs to remain in compliance from a
3 regulatory perspective and regulatory capital
4 perspective, so he may have been talking about the
5 implications of dealer marking the books down
6 would create a problem from a regulatory capital
7 perspective, but again this is pure speculation.

8 **Q. Is an alternative speculation that**
9 **defaulting on the repo could drive the**
10 **broker-dealer into a bankruptcy earlier than**
11 **planned?**

12 A. Defaulting on the repo? I don't see
13 why -- I don't read it in that way at all.

14 **Q. And when Mr. Reilly writes, "Would we**
15 **rather have that be in the sale price tomorrow,"**
16 **do you have an understanding of what he is**
17 **communicating to you there?**

18 A. I don't have a recollection of it, but
19 I think it is a question of do you mark the books
20 down before the bankruptcy filing or essentially
21 as part of the bankruptcy filing.

22 **Q. This is written on the 18th and the**
23 **sale hearing is going to be conducted before the**
24 **bankruptcy court on the 19th, LBI, correct?**

25 A. That is correct.

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Q. Do you understand this to mean a reference to the sale price that will be referenced at the bankruptcy hearing the next day?

MR. BERNSTEIN: Objection, no foundation.

A. I can't say what that would be referring to, but -- I can't say what it would be referring to.

(Exhibit 218, document Bates stamped 42628 marked for identification, as of this date.)

Q. Mr. Lowitt, you have before you what we have marked as Deposition Exhibit 218. Do you recognize the document?

A. I don't recall it specifically.

Q. Have you seen it before?

A. I don't recall seeing it before. But I see that it was sent from me to Paolo.

Q. In the e-mail sent from you to Paolo, the subject is "As matter of urgency need to get going on showing THAT the DTCC money is there."

What did you mean by the DTCC money?

A. I can't recall what I would have meant by that.

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exercise for us on the Friday. You can see here that the estimate of the 15c3 lock-up at that point was 2 billion. It turned out as a result of the work that was done that the amount of the lock-up was less than that. But it was obviously an early estimate of it as high as \$2 billion.

Q. Were you describing this as a matter of urgency based in any part on your conversation that morning with Mr. Ricci?

A. The whole exercise of identifying additional collateral, which as we talked about was a result of a conversation with Bart as well as with Rich Ricci, was a very important exercise for us on the Friday, which is why I think I would have talked about it in this way.

Q. Did you think you were at some degree of professional risk if that project was unsuccessful?

A. No, I don't recall feeling that.

(Exhibit 219, document Bates stamped 138017 marked for identification, as of this date.)

Q. You have before you, Mr. Lowitt, what we have marked as Deposition Exhibit 219. Do you

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Q. The text of the e-mail refers to the -- well, IT says, "Need proof that lock-up is 2 billion. Also other unencumbered collateral in DTCC we can pledge. Ian."

Does that e-mail relate to the project we were talking about before of identifying additional value?

A. From the context, it suggests that it does.

Q. And having looked at that now, do you have -- can you tell me why finding additional value would require looking for unencumbered collateral in DTCC?

A. I can't say why it would be in DTCC rather than unencumbered collateral in aggregate. Our exercise was around unencumbered collateral whether it was in DTCC or any other depository or location.

Q. Why were you describing this as a matter of urgency on Friday, September 19, at 1:36 p.m. eastern time? Note that the time there is GMT.

A. Well, again, to the discussion we had earlier, finding sources of value was an important

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recognize the document?

A. I don't recall the e-mail specifically.

Q. It appears to be an e-mail from you to Mr. McDade.

A. Yes, it does.

Q. And the subject says "CLS money all snarfed up by city. The 15c3 lock-up looks OK at 1.3 billion. Good faith not. So we are short 1.7 billion. The TBA and FX settlement don't work. We did find 5 billion of exchange listed options which we are investigating. Ian."

Can you explain to me what it is you are reporting to Mr. McDade here?

A. Yeah. There are a series of issues obviously. Not issues, items. CLS refers to money that we had pledged to Citi to insure that they would continue to operate as our CLS bank, so that's the bank that performs the FX settlements on behalf of -- that was performing FX settlements on behalf of Lehman Brothers. So we posted cash to them probably on the Thursday, and this suggests that they had not released it, they had taken it all themselves.

Page 150

LOWITT - HIGHLY CONFIDENTIAL

The 15c3 lock-up, so this is now saying what we think the value of the 15c3 lock-up was. So what's the excess in 15c3? Looks like at that point the estimate was 1.3 billion.

Good faith was another item of -- there was an item called the good faith lock-up, which again as part of the investigation to determine sources of value, it was determined that there was no value that could be included in the transaction from the line that was called good faith lock-up. So that is suggesting that if, you know, your target is 4 billion, that we need \$1.7 billion of additional value beyond what's in the 15c3 lock-up.

And TBA and FX settlements don't work, I think what that was meaning was there was no additional sources of value in the items of TBA or FX settlement.

And then it says we did find 5 billion of exchange listed options which we are investigating.

So it was a status update for Bart on a series of things that were going on vis-a-vis our efforts to determine the extra value.

Page 152

LOWITT - HIGHLY CONFIDENTIAL
where you say, "So we are 1.7 billion short," that's one time point. My question goes to what follows. Did there come a time when the target was met?

A. I mean there was a time when we had identified unencumbered collateral and 15c3 lock-up that we had some degree of confidence represented 3 to 4 billion dollars of value. Didn't know with certainty, but we believed that it did represent value of the amount we were searching for.

Q. Did there come a point where Barclays indicated that enough extra value had been found that it was willing to close?

A. I'm not aware of that, but the transaction went forward, so that seems to indicate it.

Q. When did you stop looking for additional assets?

A. I don't recall specifically when we stopped looking for additional assets.

Q. Do you generally recall that the search continued into the weekend?

A. I do recall that we were continuing to

Page 151

LOWITT - HIGHLY CONFIDENTIAL

Q. So you're basically looking in every corner for this extra value, right?

A. We were looking in a number of places to determine -- to find extra value.

Q. And the target was \$4 billion?

A. Yeah. My recollection is between 3 and 4, and the math here suggests that what we were targeting was \$4 billion.

Q. Let me push that a little further. Rather than suggesting it, does it refresh your recollection that the target was \$4 billion?

A. My recollection is it was between 3 and 4.

Q. Did there come a point where the target was reached? Whether it was 3 or 4 billion dollars or something in between, did there come a point where the target was reached?

A. I think we identified -- we determined that the exchange listed options were already included as part of the business transaction, so there was no additional value there, and the additional place where we found the value was in the unencumbered collateral in the various depots.

Q. As of the writing of Exhibit 219,

Page 153

LOWITT - HIGHLY CONFIDENTIAL

work through the weekend, and I do recall that we shared a schedule of unencumbered collateral with the creditors' committee on the Sunday.

Q. And who is the "we" who shared the schedule of unencumbered collateral with the creditors' committee on Sunday? Is that a meeting? And if so, who is at it?

A. I think -- my recollection is a schedule was delivered, so there were big thick piles of paper which included all the collateral that was included on that schedule, and that schedule was delivered to a group of people representing the creditors' committee in another room at Weil.

Q. Why was it delivered to the creditors' committee?

A. I can't say specifically. I assume because they wanted to review it.

Q. Did you deliver it to the creditors' committee?

A. I don't recall being the person delivering it.

Q. Did you cause it to be delivered to -- did somebody under your supervision deliver it?

LOWITT - HIGHLY CONFIDENTIAL

A. My recollection is that either -- I would expect that either Paolo or Robert Azerad would have delivered it, but I can't be precise.

Q. Other than thinking they had a reason they wanted to see it, do you have any recollection of the reason this schedule was given to the creditors' committee?

MR. BERNSTEIN: Objection, asked and answered.

A. I don't have anything additional to say.

Q. Before you, Mr. Lowitt, is what we have marked as Deposition Exhibit 220, a two-page document. Have you seen the document before?

MS. HNATT: Did you say two-page document?

MR. GAFFEY: I did.

MR. BERNSTEIN: Mine is one.

MR. GAFFEY: You know what? Let's just -- I'll sort that out during a break and we will come back to the document.

MR. BERNSTEIN: OK.

(Exhibit 220 withdrawn)

(Exhibit 221, document Bates stamped

LOWITT - HIGHLY CONFIDENTIAL

137537 marked for identification, as of this date.)

Q. Before you, Mr. Lowitt, is what we have marked as Deposition Exhibit 221, an e-mail from Bart McDade to you at the top. Have you seen the document before?

A. I don't recall the document specifically, but I have seen it as part of my preparation.

Q. The earliest e-mail in the chain is from you to McDade, September 19 at 7:12 p.m. Subject, "Please send word when you are done. Ian."

What were you referring to there?

A. Again, I don't have a specific recollection, but given from the timing of it and the context, it suggests that I would -- I am asking Bart to say when he is completed with the bankruptcy hearing with the judge.

Q. And Mr. McDade responds, "The conclave is over. We are part of BarCap," exclamation point, "subject to documenting."

Do you see that?

A. I do.

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Q. Do you have any knowledge of any documenting going on after this point?

A. I mean, I was aware that there was documentation of the transaction that was occurring over the weekend following the agreement with the bankruptcy court, but I don't have any knowledge specifically of what documentation needed to be completed.

Q. And did you -- I may have asked you this before, but just so it is in this section, were you involved in that documenting over the weekend?

A. I was not.

Q. Did you ever see it?

A. I did not. I don't remember seeing it.

Q. Further up is a response from you to McDade, Berkenfeld, with a copy to Tonucci, at 5:52 a.m. on Saturday, September 20, and it reads, "Did the court accept the 15c3 lock-up and unencumbered box make it through to BarCap? If so, need to make sure documentation is very tight so we can deliver on it. Should have Weil lawyers work closely with Paolo on it. Obviously critical

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we get this right. Congrats again. Ian."

When you refer to the documentation needing to be "very tight," are you referring to documentation about 15c3 lock-up and unencumbered box?

A. The sense of it suggests that.

Q. Did you ever see any documentation concerning the 15c3 lock-up and unencumbered box?

A. I didn't read through the contract, no.

Q. Do you know if Paolo worked with lawyers on putting that documentation together?

A. I don't know with certainty.

Q. Do you have any general recollection of that?

A. My recollection is Paolo talking with some of the folks at Barclays about this, but I don't have a specific recollection about him talking to lawyers.

Q. Do you have any recollection about him being involved in any documentation concerning the 15c3 lock-up and the unencumbered box?

A. I mean he was the person who knew a great deal about both of those two items, so I

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2 would have expected him to be involved, but I
3 don't have a specific knowledge of whether he was
4 or he wasn't.

5 **Q. Now, apart from the search for**
6 **additional value that we have been talking about,**
7 **give me a general idea of what your activities are**
8 **on the Friday and through the weekend before the**
9 **deal was closed.**

10 MR. BERNSTEIN: Can I just clarify,
11 when you say on the Friday, he has already
12 talked a lot about on the Friday.

13 MR. GAFFEY: That's a good point.

14 **Q. Let's go to the evening of the**
15 **Friday -- actually after you wrote this e-mail to**
16 **Mr. McDade, at 1 in the morning on Saturday. What**
17 **did you do during the weekend?**

18 A. Again, I have a hazy recollection.
19 But I -- again, I was very tired, but I do have
20 remembrances of spending time waiting at the Weil
21 offices to answer specific questions about
22 settlement and other issues which were a subject
23 of discussion in the -- on the Sunday.

24 **Q. What are you referring to when you**
25 **refer to settlement?**

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2 of speaking with Bart, but in all likelihood I
3 would have called him. I wasn't going to not call
4 the president of the firm.

5 **Q. Do you have a general recollection of**
6 **speaking to him in person or over the phone over**
7 **the weekend?**

8 A. Well, I believe I would have spoken to
9 him over the phone on Saturday morning, and then I
10 think we were both at the Weil offices on --
11 certainly on the Sunday.

12 **Q. As you sit here today, looking at**
13 **Exhibit 221, do you have any knowledge as to**
14 **whether there was any particular topic Mr. McDade**
15 **wanted to talk to you about when he wrote this**
16 **e-mail?**

17 A. Well, I think that again it is -- I
18 don't have a specific recollection, but from the
19 sense of the e-mail, it was to answer the
20 questions that I asked of him.

21 **Q. Did you get an answer to the question**
22 **you asked of him as to whether the court accepted**
23 **the 15c3 lock-up and unencumbered box make it**
24 **through to BarCap?**

25 A. I don't have a recollection of that,

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2 A. Well, there was a series of questions
3 about whether Barclays would step into Lehman's
4 shoes vis-a-vis settlement obligations that
5 existed in the coming week, and there were
6 representatives from a number of different
7 organizations, including DTCC and Chase, that were
8 discussing these items with folks from Barclays,
9 and on occasion people would ask questions about
10 elements of that.

11 **Q. And what was the area of knowledge or**
12 **expertise that you lent to that discussion?**

13 A. You know, it was familiarity with
14 elements of Lehman's operational processes or at
15 least knowing who within Lehman would be better
16 equipped to address those questions.

17 **Q. Now, in the e-mail that we have marked**
18 **as -- series of e-mails that we have marked as**
19 **Exhibit 221, the one at the top, Mr. McDade to**
20 **you, says, "Can you call me at home," and that's**
21 **at 10:51 p.m. -- 10:51 a.m. on Saturday,**
22 **September 20, when we convert to GMT time.**

23 **Did you speak to Mr. McDade at home on**
24 **Saturday morning.**

25 A. I don't have a specific recollection

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2 but we did begin working, once the transaction
3 closed, on both of these items, so I feel
4 confident, but I don't have a specific
5 recollection that Bart would have communicated to
6 me that these were both part of the transaction.

7 **Q. Just sort of focus where you are and I**
8 **will give you the two-page version of that**
9 **version.**

10 MR. GAFFEY: Can we just substitute --
11 do you mind if we unmark that and mark that
12 as 220?

13 MR. BERNSTEIN: Fine.

14 Would now be a good time for a break?

15 THE WITNESS: Yes.

16 (Exhibit 220, document Bates stamped
17 10298186 marked for identification as of
18 this date.)

19 (Recess)

20 BY MR. GAFFEY:

21 **Q. Mr. Lowitt, could you go back to in**
22 **the pile in front of you Exhibit 23, please.**

23 A. Yes.

24 **Q. We talked a bit about this a moment**
25 **ago where I asked you about the language in these**

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2 e-mails that referred to marking of the positions,
3 and what you meant was for BarCap to mark the
4 positions further, and I think you said this was
5 the asset-by-asset assessment that was being done;
6 is that right?

7 A. Yes, I think that's what we talked
8 about before.

9 **Q. Now, the financial schedule we looked**
10 **at earlier, one-page financial schedule, reflected**
11 **the difference between the price Barclays agreed**
12 **to pay and the amount shown on Lehman's books as**
13 **of September 16, correct?**

14 MR. HUME: Objection, lacks
15 foundation. Which schedule?

16 **Q. Exhibit 19 that's in front of you**
17 **there.**

18 A. I think that --

19 **Q. Do you have 19 there?**

20 A. I have 19.

21 **Q. That's the schedule I am referring to.**
22 **That schedule reflects the values for the assets**
23 **that reflect the difference between the amounts**
24 **shown on Lehman's books and the amount Barclays**
25 **was willing to pay, correct?**

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2 have to do in the exercise that I think Jerry is
3 referring to on Exhibit 23 is come up with a set
4 of assets which on a -- which reflects the amount
5 that Barclays is going to pay within that asset
6 category that is consistent with Exhibit 19.

7 MR. BERNSTEIN: Can I just -- can I --
8 this is the problem with having a live
9 transcript. The second sentence on the live
10 transcript begins, "I want read it that
11 way," and what I heard was, "I wouldn't read
12 it that way."

13 **Q. So I asked you a little earlier**
14 **whether in the exercise that led to the completion**
15 **of Exhibit 19, the top-down view was to arrive at**
16 **the broad price then. And to put another**
17 **question, so the exercise that led to Exhibit 19**
18 **was the top-down process to determine broadly the**
19 **difference between the amount on Lehman's books**
20 **and the amount that Barclays would pay?**

21 A. I don't think that's completely right.
22 I think that's the -- what led to Exhibit 19 was a
23 view on the Lehman side of the combination of what
24 was emerging from the sort of bottoms up with what
25 was happening top down. It wasn't just the

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2 MR. BERNSTEIN: Objection, asked and
3 answered.

4 A. What this reflects is for the
5 different -- at the broad level of the asset
6 categories, an amount that Barclays was going to
7 pay to Lehman for assets in those asset categories
8 which reflected the combination of those assets
9 they wanted to purchase as well as the price that
10 they were willing to pay, as we discussed, for the
11 large purchases as well as the volatility of the
12 assets.

13 **Q. Taking a look at Exhibit 23, which**
14 **refers to Barclays and the positions, is there**
15 **further marking down going on here when it is done**
16 **on an asset-by-asset basis?**

17 A. It is not additional. I wouldn't read
18 it that way. It is an asset-by-asset buildup that
19 gets us to the purchase. But what you see on
20 Exhibit 19 is the amount after the -- that
21 Barclays is willing to pay. It doesn't reflect
22 what was the amount that was the amount that was
23 on -- that those particular assets were on
24 Lehman's books at.

25 So the combination of things that you

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2 top-down view. It was a combination, and it was
3 iterative through the course of the evening.

4 **Q. And now looking again at Exhibit 23,**
5 **which is written on the 17th of September, this is**
6 **the security-by-security review you talked about,**
7 **yes?**

8 A. It is the effort to say, just pick a
9 number. There are \$2.7 billion of mortgages on
10 Exhibit 19. What are the specific positions that
11 are going to get transferred over to Barclays that
12 they will be paying 2.7 billion for, that
13 represents the price they are willing to pay which
14 is less than the amount that would have been the
15 book value.

16 **Q. So the question that's being answered**
17 **on the 17th is which particular securities within**
18 **the category of mortgages will be priced in a way**
19 **to add up to the total for mortgages in**
20 **Exhibit 19?**

21 A. You mean the September 18, but yes.

22 **Q. Yes. But yes is the answer?**

23 A. I believe, if I am understanding you
24 correctly, that it is the asset-by-asset view
25 that's going to -- because in the end, what was

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2 necessary to complete the transaction was a
3 specific set of assets were going to be delivered
4 at a specific set of prices. In aggregate by
5 category, we are going to be consistent with 19,
6 if it didn't shift in some way, rather than just
7 something that you saw on 19, on Exhibit 19.

8 **Q. Well, what do you mean if it didn't**
9 **shift in some way?**

10 A. Again, the values that -- the values
11 of assets may have changed, some assets that --
12 that valuations of those may have changed. I
13 didn't mean anything more than that.

14 **Q. As a result of the asset-by-asset**
15 **review that was going on, that you are writing**
16 **about on the 17th, did the delta between the**
17 **amount shown on Lehman's books and the price**
18 **Barclays was willing to pay grow larger?**

19 A. I think as we said, we didn't actually
20 do the exercise that we talked about on Exhibit
21 23. It was -- this was a series of correspondence
22 about what we would need to have done, but we
23 didn't sit down with Barclays, we didn't sit down
24 and actually re-mark any of the positions. It
25 was -- it was a reference to what we would have

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2 Fed.

3 **Q. OK. I am going to show you a new and**
4 **improved Exhibit 220. I have marked the correct**
5 **document this time. And just so we don't have a**
6 **gap in numbering, I have re-marked Exhibit 66B**
7 **also as Exhibit 220.**

8 MR. BERNSTEIN: So this is both 66B
9 and 220.

10 MR. GAFFEY: Yeah. We will call it
11 220 for the purpose of this deposition. I
12 just didn't want a numbering gap.

13 MR. BERNSTEIN: Sure.

14 BY MR. GAFFEY:

15 **Q. Let me know when you have had a chance**
16 **to look at what we have marked as Exhibit 220,**
17 **Mr. Lowitt, and tell me whether you recall seeing**
18 **it before.**

19 A. I don't have a specific recollection
20 of this chain of e-mails.

21 **Q. Do you know who David Aronow is?**
22 **A-R-O-N-O-W.**

23 A. David was one of the people in
24 operations who worked for Alastair Blackwell.

25 **Q. Would David Aronow have been involved**

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2 needed to have done if the transaction had
3 proceeded in the earlier form rather than the repo
4 form.

5 **Q. Were the individual positions being**
6 **marked for the purpose of putting them into the**
7 **repo?**

8 A. No.

9 **Q. Would you need to do --**

10 A. I don't believe so.

11 **Q. Would you need to -- to put them into**
12 **repo, would you need a schedule of individual**
13 **positions?**

14 A. The repo, the advantage of the repo
15 was that there was collateral that was at the Fed,
16 that collateral was delivered to Chase, Chase was
17 supposed to deliver that collateral to Barclays at
18 BoNY, Bank of New York, and as a result, there was
19 no requirement to go into separate schedules and
20 identify specific assets or to mark them in any
21 particular way.

22 **Q. Because they are marked by BoNY when**
23 **they're received, BoNY in the triparty; is that**
24 **correct?**

25 A. And by Chase when they return from the

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2 **in this security-by-security marking we were**
3 **talking about before with respect to Exhibit 23?**

4 A. There was no security-by-security
5 marking for Exhibit 23. There was no effort
6 that -- in other words, there was a project that
7 was being identified as a piece of work. It
8 wasn't a piece of work that actually took place.

9 **Q. OK. In his e-mail to Mr. Tonucci,**
10 **copy to you, Mr. Aronow says, "Paolo, apologies if**
11 **you already know this. Barclays' operations team**
12 **has recalculated the value of the collateral that**
13 **they received from us last night and they are more**
14 **than fully collateralized, including the haircut**
15 **applied. Senior management at Barclays I am told**
16 **are very satisfied with the results of the effort.**
17 **They are not interested in moving forward with any**
18 **more collateral movements from us to them today**
19 **through the process we built and applied**
20 **yesterday. They have said that we can now stand**
21 **down with the process we had in place to move**
22 **collateral."**

23 **Do you know what Mr. Aronow was**
24 **referring to when he communicated that the**
25 **Barclays operation team had recalculated the value**

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of the collateral they received from Lehman?

A. I mean I can't know precisely what Dave meant by this, but I would assume what Barclays' operations was doing was looking at the collateral that was in their BoNY accounts and assessing the value of that collateral, probably utilizing the BoNY triparty system to assess what they had received and what the value of that was.

Q. When Mr. Aronow writes that Barclays was now "more than fully collateralized, including the haircuts applied," what do you understand that to mean?

A. Again, I don't know what Dave was referring to.

Q. All right. Well, if you had received this in realtime on the 19th of September, give me your best estimate of what you would have understood it to mean or whether you would have had to write back to David to say what do you mean by this.

MR. HUME: Objection, calls for speculation.

A. I don't know what David was referring to specifically with that. I could speculate if

LOWITT - HIGHLY CONFIDENTIAL
you would like.

Q. No, thank you.

Did it ever come to your attention that Barclays was more than fully collateralized?

A. Again, I wasn't aware of Barclays being fully collateralized or not. I know that there were a lot of difficulties associated with the collateral movement from Chase to BoNY and that that didn't proceed smoothly.

Q. Do you know what Mr. Aronow was referring to when he refers to "the process we had in place to move collateral"?

A. Again, from the context, I would suggest that it is, or I would understand it to be the collateral that was going to move from Chase to BoNY because, you know, the Fed repo was taken down, and rather than transact through JP Morgan, the new repo was going to get booked through BoNY. That process of moving the collateral was not a standard one, and so a process needed to be developed and then applied.

Q. And at some point apparently Lehman was told it could stand down with the process, yes?

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A. That's what David is saying.

Q. Do you have any independent knowledge of a process -- of Lehman standing down on that process?

A. I mean at some point, we weren't moving additional collateral, but I'm not aware specifically of, you know, a time or a place where people were told no additional work needed to get done.

Q. Do you have -- without regard to the documents, sir, do you have any knowledge of a point during this week where Barclays said we have enough collateral?

A. I am not aware of that, no. I don't recall being aware of that.

Q. Now, did this, the project we have been talking about of looking for additional assets, did that project ultimately succeed? Did you find enough additional assets?

A. I think we identified unencumbered collateral and we understood the excess collateral in the 15c3 lock-up were in the range that we were looking for.

MR. GAFFEY: Can we mark that, please.

LOWITT - HIGHLY CONFIDENTIAL
(Exhibit 222, e-mail dated 9/20/2008 at 1:42:32 marked for identification, as of this date.)

Q. We have marked as Exhibit 222, Mr. Lowitt, a one-page chain of e-mails. Take a look through it and tell me whether you have seen it before.

A. I don't recall the e-mail trail specifically.

Q. On the lower e-mail from you to Paolo Tonucci, copy to Steven Berkenfeld, the subject is "Thanks for all your help getting us over the goal line. We did it," with exclamation points.

Is "we did it" a reference to we found enough additional value to transfer to Barclays?

A. I think it's -- that the transaction was approved by the court would have been what I think we would have referred to as getting over the goal line. And we participated in that.

Q. And what was Mr. Tonucci's participation in getting you over the goal line -- withdrawn. I will get to that in a minute.

That being so, there is no reference in here to the bankruptcy court or hearing or

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decision. It is speaking in terms of 15c3 lock-up money and the unencumbered box. By that, were you referring to the result in the hearing of the bankruptcy court where the sale was approved?

MR. BERNSTEIN: Objection, mischaracterizes the document.

MR. HUME: I object to vague and ambiguous, the question.

A. Again, my -- you know, we had just gone through an extremely trying period in aggregate. You know, dealing with the bankruptcy initially and then all the work to get a deal done with Barclays. And this is on the Saturday saying we got the approval or the transaction was approved, but we have to do more work. We have to ensure that the 15c3 lock-up money and the -- you know, we could free that up and transfer it, and we can also transfer the collateral in the unencumbered box to Barclays.

Saying that everything that we have had to deal with has proven to be complicated and difficult, we wanted to make sure that we had a team on it to ensure that we are organized to effect that.

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Q. And how was it that Mr. Tonucci's activities helped get over the goal line?

A. Well, it was a combination of things. One was the work that he had done in identifying the excess collateral, as well as the 15c3 excess. It was also all the work that was done in effecting the movement of collateral from Chase to BoNY, as well as helping to keep the firm sort of funded over that period.

Q. And Mr. Tonucci responds in response to your direction to coordinate with Berkenfeld and the additional work that needs to be done, "Agreed. We will use Robert for this. Have confidence he knows how to get done."

Is that a reference to Robert Azerad?

A. I believe it is.

Q. Now, I asked you before if in the course of the project to find additional assets you felt that you were at some degree of professional risk if that goal was not achieved. Do you recall that?

A. I do recall you asking that.

Q. And you told me no?

MR. BERNSTEIN: Mischaracterizes his

LOWITT - HIGHLY CONFIDENTIAL
testimony.

Q. Well, did you feel some degree of professional risk if the goal was not achieved with respect to finding additional assets?

MR. BERNSTEIN: Objection, asked and answered.

You can answer it again.

A. I think I said I didn't recall specifically.

Q. Well, you write to Mr. Tonucci on the 20th of September at 9:33 a.m., "You need to be close to it. If we don't succeed, you and I are toast despite all our heroics."

Does that refresh your recollection?

A. I think that -- what I think was described here is we both worked fantastically hard to get the transaction to a point where we could fund the firm through the Friday where we could meet the requirements of the -- we could support the transaction as it was negotiated, and that we didn't want to sort of fail at the last minute vis-a-vis our ability to move the collateral and to resolve the 15c3 lock-up.

Q. Is that what you meant when you said

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to Mr. Tonucci, "if we don't succeed, you and I are toast despite all our heroics"?

A. That's what I think I could have meant by that.

Q. Could you also have meant by that if the deal didn't close, the offer you accepted for approximately \$10 million in compensation from Barclays would not go into effect?

A. I don't think that's what I was referring to. I think we were anxious to have a trade succeed because of what it meant for the whole franchise and all the employees of Lehman Brothers, as well as to see the franchise continue in some form, given the amount of work we had put into building it up over the years, as well as having a sort of functioning entity to continue to support the various estates.

So I think we were anxious for it to succeed for a range of reasons.

Q. And when you refer to the benefits of this to the whole franchise and the employees and functioning entity, is that what you meant when you wrote to Mr. Tonucci referring to "you and I being toast"?

LOWITT - HIGHLY CONFIDENTIAL

MR. BERNSTEIN: Objection, asked and answered, and argumentative.

You can answer it one more time and then we will move on.

A. I think it means -- I don't see it as referring only to Paolo and myself. I think of it as if we are not successful with this despite all the hard work that everybody has put into this, that it will be -- that it would have been in vain.

Q. Had you and Mr. Tonucci ever had discussions, the two of you, about the effect on your own personal careers if the transaction didn't close?

A. I don't recall us having that conversation, and we were so busy with so many things, I don't believe we would have had that conversation.

Q. Well, do you know if Mr. Tonucci had an offer in hand from Barclays during the week before the closing?

A. He didn't have an offer in the week before the closing. The deal would have included, you know, all the employees of LBI having an offer

LOWITT - HIGHLY CONFIDENTIAL
around Mr. Tonucci specifically. There were -- there was a list that had been generated for a number of people in the corporate area that Barclays was interested in retaining.

Q. Did this list include Mr. Tonucci?

A. It did.

Q. Did it include Mr. Kelly?

A. It did.

Q. Did it include Mr. Reilly?

A. It did.

Q. Did it include -- I didn't get the name -- the person who was in charge of tax who was a direct report to you?

A. Yes, it did.

Q. Did it include Alastair Blackwell?

A. It did.

Q. Did it exclude any of your direct reports?

A. I can't say with certainty. It was a list that was -- that had actually been generated by Lehman prior to the bankruptcy as the list of people that would receive -- that potentially would have received various stock awards that Lehman was contemplating.

LOWITT - HIGHLY CONFIDENTIAL

as part of the transaction.

Q. Had you had any conversations with Mr. Tonucci in the week prior to the transaction about whether he, Paolo Tonucci, was likely to find employment with Barclays after the transaction?

A. I don't recall having that conversation with Paolo.

Q. Did he ever raise that topic with you, is there going to be a job for me at Barclays?

A. I don't recall him ever raising it with me.

Q. Did there ever come a point when you spoke to Mr. Tonucci who reported directly to you about whether there would be a job for him at Barclays?

A. I did speak with Barclays the week after the transaction closed together with a number of other folks who were on a list of -- people that Barclays wanted to retain. But that was only the week after the transaction closed.

Q. When did Barclays make it known to you that it wanted to retain Mr. Tonucci?

A. Well, there wasn't a communication

LOWITT - HIGHLY CONFIDENTIAL

So it was a lift of a list that had been developed previously.

Q. On the Friday, the 19th, when the project was going on to search for additional assets, during that day, was it matter of any concern to you that you might not have a position at Barclays if that project was not successful?

MR. BERNSTEIN: Objection, asked and answered.

A. I did not -- that was not my focus on that day, and it was not a concern of mine, I don't believe.

Q. Was it a focus of yours or matter of concern to you that if the project of finding additional value was not successful, your several direct reports would not have jobs or the possibility of jobs at Barclays?

A. Again, I was -- we were all working very hard to ensure a transaction took place without regard to individual circumstances.

(Exhibit 223, document Bates stamped 10293506 marked for identification, as of this date.)

Q. Mr. Lowitt, I put before you what we

LOWITT - HIGHLY CONFIDENTIAL
have marked as Deposition Exhibit 223. Have you seen this document before?

A. I have not. Or I don't recall seeing it before.

Q. The document is a chain of e-mails, the earliest of which is 20th September, 2008, at 1:04 p.m. from you to Alastair Blackwell with a copy to Paolo Tonucci. Subject, "Confirming our unencumbered box is now the top priority."

And in it you say to Mr. Blackwell, "Please coordinate with Paolo to do everything possible to ensure we have the 1.95 billion of collateral identified and ready to move and address claims from Chase that they have a claim. Ian."

What are you referring to when you refer to claims from Chase there?

A. I am -- again, I don't have a recollection of this specifically, but Chase were seizing collateral, and so what we needed to do was make sure that the collateral that we had identified that was unencumbered was -- in fact, we were in -- we had the ability to deliver to Barclays.

LOWITT - HIGHLY CONFIDENTIAL

Q. Sure.

A. Thank you very much.

(Recess)

(Exhibit 224, four-page e-mail dated 9/20/2008 at 6:12 p.m. marked for identification as of this date.)

BY MR. GAFFEY:

Q. Mr. Lowitt, I am putting before you a document we have marked as 224. Take a look at that, please, and let me know whether you have seen it before.

A. I don't have a specific recollection of seeing this trail of e-mails.

Q. OK. I should -- I am going to ask you a couple of questions about it anyway, but I just want to note that as far as I can see on my read, you are not within the e-mail chain until the very top one that seems to be sent to you as a whole. I only see your name at the top.

But you will see that the e-mail chain is a series of communications that start with Martin Kelly writing to Robert Azerad, Alastair Blackwell and Brett Beldner with some ccs about an opening balance sheet that has been requested by

LOWITT - HIGHLY CONFIDENTIAL
So I think that this is again about operationalizing what had been agreed to, which was our ability to deliver the collateral to Barclays to satisfy the terms of the transaction.

Q. OK. So on the Saturday, as far as this e-mail reflects anyway, on the Saturday, you are looking at whether the -- having found the additional value, whether it can actually be -- you are assuring yourself it can be transferred to Barclays, correct?

A. That's the essence of the e-mail, yes.

Q. Over the course of the weekend, apart from that type of activity, what was found on Friday can be transferred to Barclays, were there efforts to find still more value?

A. Again, I can't recall whether there were things specifically to add additional value. I think that if there were additional efforts, it was to sort of understand, in the event some of this collateral couldn't be delivered, whether there was other collateral that could have been delivered to satisfy the requirement under whatever the deal was that was agreed.

Can I have a quick break, please.

LOWITT - HIGHLY CONFIDENTIAL
Barclays. Do you see that?

A. I do see that on the last page.

Q. Do you have any independent recollection of work being done to prepare an opening balance sheet for Barclays?

A. I don't have an independent recollection of that, no, not that I recall.

Q. And in the e-mail that follows, and I'm moving up the page here, 20 September 2008 at 10:27 a.m. from Azerad to Kelly, Blackwell and Felder. Do you see that?

A. I do see that.

Q. Azerad refers to a "classification of the assets by asset class that should be done by end of day today, assuming that what was transferred was," and then he has got two items. One is, "Repo with Barclays as of Thursday night (49 billion-42 billion of securities and 7 billion of cash)." Do you see that?

A. I do see that.

Q. And then two, "Non-actionable box as shown to Barclays on Friday afternoon (1.9 billion of collateral). Actual box is slightly bigger because it also contains Lehman debt."

LOWITT - HIGHLY CONFIDENTIAL

Do you see that?

A. I do.

Q. And do you recognize this to be two of the components of the value that was ultimately transferred to Barclays in the transaction?

A. I see this as two of the elements of the transaction, the repo transaction and the non-actionable box, which I think is shorthand for or just a different term for the unencumbered collateral.

Q. The description of the values there is correct, is it not? 49 billion for the repo and 1.9 billion for the unencumbered collateral?

MR. HUME: Objection, lacks foundation, vague and ambiguous.

A. Yeah. As I said before, unencumbered collateral was about a billion nine, and the total repo was, you know, my recollection, about -- between 49 and 50 billion dollars of collateral was what was papered, and the cash movement was about \$45 billion, again from my recollection.

What I will say, I don't think the 7 billion in cash was actually included in the 49.

Q. Well, there was a point where -- there

LOWITT - HIGHLY CONFIDENTIAL

was 7 billion in cash that was supposed to be included, correct?

A. Again, I believe that that was how the 49 was -- or 49, 50 was going to get established, but it didn't move -- I don't believe it all moved.

Q. Do you know why the 7 billion did not move?

A. I don't know why. I know Chase didn't move it.

Q. And ultimately Chase's failure to move it was resolved in a settlement that came in December, correct?

A. I don't know when it happened. I know there was an ongoing settlement discussion that Mr. Ricci was involved with.

Q. Were you involved in any of the discussions that led to that settlement in December?

A. I was not.

Q. Do you have any knowledge as to on what terms Chase's failure to move the 7 billion were resolved?

A. I don't know and I wasn't part of the

LOWITT - HIGHLY CONFIDENTIAL

negotiating team.

Q. The plan was 42 billion plus 7 billion in cash, correct?

A. Again, I can't confirm that for you. That's what it says down on the e-mail.

Q. Apart from the fact that it says that on the e-mail, sir, do you have any knowledge as to whether the amount of the repo, the collateral in the repo was roughly \$49 billion?

A. Yeah, my recollection is between 49 and 50 billion dollars.

Q. Further up the e-mail, there is an e-mail from Paolo Tonucci to Azerad, Kelly, Blackwell and Beldner.

A. This is the 10:31?

Q. That's right.

And in it Mr. Tonucci writes, "We also need to add the 15c3 cash as a receivable." Do you see that?

A. I do see that.

Q. And if you read further up the e-mail, you will see that's calculated -- well, that a series of cash sources are calculated, and I am going to ask you to read through it and then take

LOWITT - HIGHLY CONFIDENTIAL

a look at the e-mail from Dan Flemming to Paolo Tonucci, 20 September at 5:01. Read that through.

A. I have read the E mail.

Q. Do you see the reference in the 20 September 5 -- 17:01 e-mail to a summary of securities in lock-up at JPM for 15c3 EBOC, all caps, and PAIB, all caps?

A. I do.

Q. I want to see what your reading is of this, but as I understand the calculations being done here, there is a total of 1.763 billion --

A. Yeah, my --

Q. -- identified here; is that right? Are you seeing it that way?

A. Yeah. My recollection was that the 15c3 excess was about \$1.75 billion, so this would be consistent with that recollection.

Q. And at the end of the day, in the event only the security portion of the 15c3 was -- well, what was the ultimate amount of 15c3 that went over?

A. Again, I know that in the final contract, the amount was about \$560 million.
(Exhibit 225, two-page document Bates

1 LOWITT - HIGHLY CONFIDENTIAL
2 stamped 77882 marked for identification, as
3 of this date.)

4 **Q. I put before you Exhibit 225,**
5 **Mr. Lowitt. Tell me, please, if you recall seeing**
6 **this document before.**

7 A. I don't recall seeing this document
8 before.

9 **Q. The chain of e-mails here begins on**
10 **the second page with an e-mail -- well, on the**
11 **first page it runs over. An e-mail from Paolo**
12 **Tonucci sent September 18, 4:07 p.m., to you, copy**
13 **to Alastair Blackwell, subject, "First 5 billion**
14 **gone."**

15 **What is that a reference to? Do you**
16 **know?**

17 A. Again, I would assume this is moving
18 the collateral from Chase to BoNY.

19 **Q. And that's collateral in respect of**
20 **the September 18 Lehman-Barclays-BoNY triparty**
21 **repo?**

22 A. Right. The unwind of the Fed and the
23 movement of collateral from JP Morgan to BoNY, so
24 the repo could be booked through BoNY's triparty
25 rather than Chase's triparty.

1 LOWITT - HIGHLY CONFIDENTIAL
2 away from funding the street and funding Lehman.
3 So in addition to taking on the Fed
4 repo, Barclays were additionally funding Lehman.

5 **Q. In a repo transaction separate and**
6 **apart from stepping into the Fed repo?**

7 A. Separate and apart.

8 **Q. OK. And that --**

9 A. And that was built up over, I think --
10 again, I can't say with certainty, but I think it
11 was probably being built up on the Tuesday and the
12 Wednesday.

13 **Q. Now, on the Thursday in your e-mail**
14 **from -- in your e-mail to Blackwell and Tonucci,**
15 **you seem to be asking whether we are still**
16 **papering the \$18 billion repo with Barclays or is**
17 **that all part of the same transfer. Is the**
18 **question you are asking whether they are to be**
19 **combined, that is the Fed repo and the 18 billion?**

20 A. It is saying -- I don't recall it
21 specifically, but the question would have been,
22 was Barclays going to continue to fund the
23 \$18 billion of collateral or cash -- I can't be
24 sure if it was collateral or cash -- in addition
25 to what they were doing with the Fed, or was -- or

1 LOWITT - HIGHLY CONFIDENTIAL

2 **Q. The next e-mail up, from you to**
3 **Blackwell, September 18, 16:35, you write, "Are we**
4 **still papering the 18 billion repo from Barclays**
5 **or is that all part of the same transfer? Afraid**
6 **that is getting lost in the numbers. Ian."**

7 **Do you see that?**

8 A. I do.

9 **Q. Mr. Blackwell responds in the next**
10 **e-mail up, "We are not unwinding. It was**
11 **15.8 billion last night. We will increase it at**
12 **the end of the process."**

13 A. I see that.

14 **Q. This was just kind of a cry for help**
15 **for me. What is the \$18 billion Barclays repo you**
16 **are referring to here?**

17 A. So you will recall one of those
18 earlier e-mails that we talked about that the
19 funding position of the firm was deteriorating
20 quite rapidly. So on the Wednesday we talked
21 about the position having deteriorated by
22 \$7 billion. Barclays was assisting us in our
23 funding, so Barclays was doing repos with Lehman
24 and helping to make up the lost funding capacity
25 that we were experiencing as people were pulling

1 LOWITT - HIGHLY CONFIDENTIAL
2 were they in effect going to cancel this
3 \$18 billion repo that they had outstanding.

4 **Q. And that perhaps explains for me**
5 **anyway the e-mail you're sending further up,**
6 **Lowitt to Blackwell, September 18, 16:44. What --**
7 **"Do you mean increase it at the end of the**
8 **process? Do you mean that the total repo with**
9 **BarCap becomes 15.8 plus 48 or so? What is the**
10 **exact number to take out the Fed so it goes up to**
11 **63.8?"**

12 **That's not what happened, right?**

13 A. That's not what happened. One way
14 this could have happened was that Barclays
15 maintained their \$18 billion repo, which they were
16 doing through Chase, and in addition to that, they
17 were going to take on the \$50 billion or so off
18 the Fed.

19 **Q. Now, did Barclays roll a \$15.8 billion**
20 **repo --**

21 MR. BERNSTEIN: In your last answer
22 did you say 15 billion or so off the Fed or
23 50?

24 THE WITNESS: 50. 5-0.

25 **Q. Did Barclays roll the \$15.8 billion**

LOWITT - HIGHLY CONFIDENTIAL
repo, the one that is referred to here?

A. They did not.

Q. Had it been your expectation that they would?

A. I mean expectation is -- I'm not sure if that's the right word. I certainly wasn't aware that they were not going to, but that was why I was asking the question.

Q. Were you surprised at the time to learn that they weren't rolling the \$15.8 billion repo?

A. Again, I don't have a complete recollection, but I do believe that I -- it was not expected that they were not going to roll the 15.8 that they had been funding up to that point.

Q. So did that create -- we have enough to deal with there. Does that create another problem that has to be addressed to replace that funding?

A. That's the heart of the issue with Chase, because Chase then had to fund that as a box position. So Chase effectively stood in to fund that position on the Thursday evening.

Q. Did Chase do that, stand in on that

LOWITT - HIGHLY CONFIDENTIAL
funding?

A. They did.

Q. Would you explain to me how they do that? I'm a little, as you put it in your e-mails, lost in the numbers. How does Chase stand in to replace the Barclays repo funding?

A. The collateral is sitting in the Chase accounts, so they have the collateral, and they extend a box loan against that collateral.

So the way the triparty would work normally is, if there is any collateral left in the box, because of inefficiencies in funding through the course of the day that weren't anticipated, in certain cases if there is extra collateral in the box, Chase would extend a loan against that collateral.

So the collateral here that had been funded by Barclays in the 15.8 remained in the box as collateral, and Chase needed to fund it that night with a very substantial box loan.

Q. And they made the loan?

A. They did make the loan.

Q. And does that roll the next day?

A. Well, it remains in place and the

LOWITT - HIGHLY CONFIDENTIAL
meeting with the bankruptcy judge occurs on the Friday afternoon.

Q. Mr. Lowitt, I put before you what was previously marked as Deposition Exhibit 77B. Have you seen those e-mails before, that chain of e-mails?

A. Yeah, I don't have a specific recollection of this e-mail chain.

Q. The e-mail -- again, I am now starting at the top of the page rather than working chronologically. The e-mail from you to Monty Forrest, Alastair Blackwell, Neal Ullman, Jim Hrasca, copies Tonucci, Azerad and Flemming, entitled "1.9 billion, 9:15 p.m. update."

And you say, and it's as follows,
"Need a CUSIP level detail of the collateral and where it is for a 7 a.m. meeting with Bart. Monty, you or Alastair need to be at that 7 a.m. meeting to prepare for a final Weil meeting to finalize the agreement. Thanks. Good luck getting additional collateral. But good accurate presentation of the collateral is also critical, as we will append to the agreement. Thanks again for all the hard work. Ian."

LOWITT - HIGHLY CONFIDENTIAL
Now, do you recall -- if you don't -- even if you don't recall a particular e-mail, do you recall putting this project on the plate of people that night for a 7 a.m. meeting with Bart McDade?

A. I don't have a recollection of that.

Q. Do you recall meeting with Bart McDade on the Monday morning at 7 a.m.?

A. Is it on the --

MR. BERNSTEIN: Yeah.

Q. Let me back up. The e-mail you send is --

A. This is Saturday night for Sunday morning.

Q. You're right. I have screwed up my GMTs here.

So the e-mail is late Saturday night at about 10:23 p.m. Saturday night, and refers to a 7 a.m. meeting for Sunday, yeah?

A. I believe that to be the case based on the timing.

Q. OK. All right. And the reference in here to a final Weil meeting to finalize the agreement, what agreement are you referring to in

LOWITT - HIGHLY CONFIDENTIAL
there?

A. Again, I know that the -- that there were meetings on Saturday and Sunday at Weil which were finalizing the agreement with Barclays, and that there were some set of issues or items that, you know, still needed to get resolved, and that's why, you know, we were meeting at the Weil offices on Sunday.

Q. Did you go to any of those meetings?

A. I mean I was at Weil. A lot of time was spent sitting around. There was some meetings that I was a part of, but the majority of meetings were happening with other people involved in those.

Q. And you were not at any of the meetings where the agreements were finalized; is that right?

A. That's -- I don't remember being at any meetings where things were finalized.

Q. And in this e-mail, you express to the men to whom you are sending it, "Good luck getting additional collateral." What is that a reference to? Are you still looking for collateral as late as Saturday night?

LOWITT - HIGHLY CONFIDENTIAL
have marked as Deposition Exhibit 226. Have you seen that before?

A. I have no recollection of seeing this before.

Q. Do you know Gerard Larocca?

A. Gerard is the CAO for BarCap in the Americas.

Q. And this e-mail is dated September 21, 2:15 p.m.

A. So that's the Saturday?

Q. Yes. No, that's the Sunday.

A. That's the Sunday.

Q. That's the Sunday.

Entitled "Please give me a call to review the schedules on collateral." And the text of the e-mail says, "To emphasize the key point, there is no overlap between the unencumbered collateral and the purchased assets of 49.9 billion. Ian."

Do you see that?

A. I do.

Q. Do you have a recollection of there being some issue that you needed to resolve or clarify with Mr. Larocca as to whether the

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A. I think we were trying to understand what was the collateral that was unencumbered. The information that was available was extremely -- it was extremely difficult to get clarity on what collateral we had that was really unencumbered, given that we didn't have access to many of our accounts at Chase and we didn't know what collateral Chase had actually taken.

So I think that was what this was probably referring to. But I don't have a precise recollection of it. Based on what I know was going on at the time.

Q. Did that get straightened out, what collateral they had actually taken?

A. I think it was -- it wasn't straightened out completely that weekend. I think it remained work that was ongoing, and we didn't have access to many of the -- much of the information systems that we needed to resolve that completely.

(Exhibit 226, e-mail dated September 21, 2008 at 2:15 p.m. marked for identification, as of this date.)

Q. I put before you, Mr. Lowitt, what we

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unencumbered collateral overlapped with the repo amount?

A. I don't have a specific recollection, but I'm sure that BarCap would have wanted to make sure that the schedule that was the unencumbered collateral schedule didn't include any assets that were already in the repo transaction and that they were -- given the sort of uncertainty around information, that we were sure that the collateral that was in the unencumbered collateral schedule was not included in the repo transaction that we talked about before.

Q. And apparently you determined that the unencumbered collateral was not included in the repo; is that correct?

A. That was what a lot of the work that Alastair and the others who are referenced in that earlier e-mail were working to insure. Not only that it wasn't in the repo, but also that it was genuinely unencumbered and that if there was -- you know, additional work over that period may have identified some collateral that we had previously thought was unencumbered that may have been encumbered as they got better or new

1 LOWITT - HIGHLY CONFIDENTIAL
2 information.

3 **Q. When you write to Mr. Larocca on**
4 **Sunday, the 21st, the conclusion that has been**
5 **reached is it wasn't in the repo and it was**
6 **unencumbered, correct?**

7 A. That was what the exercise was
8 designed to ensure, and every effort was made to
9 ensure that was the case. Whether it was correct
10 in every case, can't say, but that was the best
11 effort that a lot of people were putting in to
12 determine that was the case, because that was our
13 understanding of what the transaction called for.

14 **Q. I'm not trying to be argumentative**
15 **here. I think we may be at cross purposes. I**
16 **think what I am asking you is, this project people**
17 **were working so hard on, did it conclude that the**
18 **unencumbered -- that the unencumbered collateral**
19 **was not included in the repo and it was available**
20 **for transfer?**

21 MR. BERNSTEIN: Objection, asked and
22 answered.

23 A. The exercise was to identify
24 collateral that was unencumbered and not part of
25 the repo transaction. The people working on it

1 LOWITT - HIGHLY CONFIDENTIAL
2 to the 769 million of Treasuries so should be more
3 comfortable to accomplish."

4 **Does that reflect an adjustment in the**
5 **15c3 that no cash would move over?**

6 A. I don't know if it would be that no
7 cash would move over. What I understood this to
8 mean was the amount of excess under the 15c3 that
9 was in the contract was 769 rather than that
10 billion seven that had been talked about earlier.

11 **Q. What contract are you referring to?**

12 A. The final agreement that was signed by
13 BarCap.

14 **Q. And you have never seen that contract?**

15 A. Which I didn't read.

16 **Q. Well, were you -- did you ever have it**
17 **in your hand? Were you ever in possession of it?**

18 A. I did not have it in my hand that I
19 recall.

20 **Q. And in your e-mail to Mr. Tonucci, at**
21 **5:22 on the morning of September 22, you ask, "Is**
22 **it all signed? Ian." Do you see that?**

23 A. Yes, I do.

24 **Q. What is the "it" that you are**
25 **referring to?**

1 LOWITT - HIGHLY CONFIDENTIAL
2 were confident that that was the case.

3 What I can't say with certainty is
4 that that was correct in every single
5 circumstance, but that was the purpose of the
6 exercise that people were undergoing.

7 **Q. OK, thank you.**

8 **(Exhibit 227, two-page document Bates**
9 **numbered 70327 marked for identification, as**
10 **of this date.)**

11 **Q. I put before you, Mr. Lowitt, what we**
12 **have marked as Deposition Exhibit 227. Have you**
13 **seen this set of e-mails before?**

14 A. Again, I don't recall the specific
15 flow of e-mails.

16 **Q. Looking at the earliest e-mail in the**
17 **chain, from Tonucci to you September 22,**
18 **5:24 a.m., re: 15c3 -- you know, I think it's part**
19 **of --**

20 A. Mine says 4:02 a.m.

21 **Q. I was in the wrong place. Let me**
22 **start again.**

23 **The earliest is 4:02 a.m. entitled**
24 **"15c3." Tonucci writes to O'Meara, Lowitt, Kelly,**
25 **Azerad and Blackwell, "Final agreement was limited**

1 LOWITT - HIGHLY CONFIDENTIAL

2 A. I think I would have been referring to
3 the agreement between Barclays and Lehman being
4 finally signed and completed.

5 **Q. Again, just so we -- this series of**
6 **questions is complete, that's the agreement you**
7 **hadn't seen?**

8 A. It was the agreement that was being
9 worked on by a large number of people between
10 Barclays and Lehman. I wasn't involved with that.
11 I wasn't present at the time that those agreements
12 were being worked on.

13 **Q. Now, further up in the e-mail chain,**
14 **you're told by Mr. Tonucci that there is an issue**
15 **with RACERS which JPM had on their list of assets**
16 **to transfer. That is the only open item. Do you**
17 **see that?**

18 A. I do.

19 **Q. Do you have any recollection of what**
20 **the issue was concerning RACERS?**

21 A. I don't have a specific recollection,
22 but I can infer from this that JP Morgan wanted
23 the RACERS to be included in the repo trade with
24 Barclays and that Barclays was resisting that, and
25 that was something that I was aware was an issue.

Page 206

LOWITT - HIGHLY CONFIDENTIAL

Q. Can you give me a bit more detail about the issues? Why was it Barclays was resisting that? Did you have an understanding of that?

A. Well, it was one of those assets that Barclays didn't want to take, and when they thought about the Fed repo that they stepped into, the Fed repo didn't include the RACERS, and so they didn't feel that they should have to take the RACERS position as part of the repo.

Q. Did they wind up taking the RACERS position, as far as you know?

A. I don't know. That was, I'm sure, part of the discussion between JP Morgan and BarCap that you referenced that was completed in December.

Q. Further up in the e-mail Mr. Tonucci says, "We are not involved, have tried to stay out of it completely." Do you see that?

A. I do.

Q. What is your understanding of why Tonucci or Lehman would try to stay out of it completely?

A. Look, I -- I don't know what Paolo

Page 207

LOWITT - HIGHLY CONFIDENTIAL

means by this specifically, but this would -- I think we would have seen this as an issue between JP Morgan and BarCap to resolve, not something that Lehman could contribute to.

Could I take a quick break, please.

Q. Sure. If it helps, I am almost done. If you want to take a break --

A. Just a short one. I just need a few minutes.

(Recess)

BY MR. GAFFEY:

Q. There was some part of your testimony that you wanted to clarify, sir?

A. Yes.

MR. BERNSTEIN: Let me refer you to the end of 176. You were asked, "What was the ultimate amount of 15c3 that went over?" And your answer: "Again, I know that in the final contract, the amount was about \$560 million."

Do you want to make a clarification?

A. The correct number would be \$760 million, around \$760 million.

Q. Thanks.

Page 208

LOWITT - HIGHLY CONFIDENTIAL

Mr. Lowitt, when the -- you will -- can you pull out -- I think you have it there -- Exhibit 19.

A. Yes.

Q. Everybody spends time with Exhibit 19. Exhibit 19. When the -- when that schedule was put together and the asset classes -- when that schedule was put together and it was going to reflect the price that Barclays would pay versus the amount shown on Lehman's books for those asset classes, were the RACERS included within the asset classes that are listed?

A. I actually don't know. I don't know.

Q. We talked a bit just before the last break about an issue that arose over the weekend where Barclays didn't want the RACERS and they were -- I think they were taken out of the collateral supporting the repo. Is that right?

A. Again, I don't know what ended up being concluded between JP Morgan and Barclays, but I know that it was a point of contention between the two parties.

Q. And whatever discussions they had to solve that point of contention, do you know if the

Page 209

LOWITT - HIGHLY CONFIDENTIAL

end result was the RACERS were not transferred over to Barclays?

A. Again, I don't know the details of what the settlement was between JP Morgan and BarCap, so I don't know whether the RACERS went over to Barclays or remained with JP Morgan.

Q. Do you know if the basis of Barclays' concern about the RACERS was the quality of that collateral?

A. I don't know the basis of their concern. It may well have been their ability to feel comfortable with what they were willing to pay for it, but I don't know why, what the basis of their concern was.

Q. We have talked from time to time today about the delta between the amount Barclays was willing to pay against the amount -- against the value that Lehman ascribed to the collateral. Was there any discussion over the weekend about adjusting that delta if the RACERS were taken out?

A. Again, I'm not aware of any discussions around that. I think that the repo that Barclays believed that they were entering into was the one that they were standing in the

Page 210

1 LOWITT - HIGHLY CONFIDENTIAL
2 shoes of the Fed. The RACERS were not part of the
3 repo with the Fed, so they were not expecting the
4 RACERS to be part of the transaction.

5 **Q. The constituent parts of the**
6 **collateral that was in the repo at the Fed, the**
7 **body of collateral that was with the Fed, was that**
8 **body of collateral amongst the securities that**
9 **were valued that led to the -- valued and priced,**
10 **that led to the drafting of Exhibit 19?**

11 MR. HUME: Objection, vague and
12 ambiguous.

13 A. I think the --

14 **Q. You know, I think my friend Hamish**
15 **might be right. Let me rephrase that.**

16 **Did the component parts of Lehman's**
17 **inventory change from the time the exercise that**
18 **led to Exhibit 19 took place to the time**
19 **collateral was put into the repo when Barclays**
20 **stepped in for the Fed?**

21 A. I think there was some small amount of
22 trading activity, but given the state of LBI, it
23 would have been, you know, securities that were
24 maturing or settling but there was very little
25 trading activity. So it wouldn't be identical,

Page 212

1 LOWITT - HIGHLY CONFIDENTIAL
2 where Mr. McDade allowed as how if that number was
3 too high, Lehman had just left a billion dollars
4 on the table?

5 A. I don't recall any conversations
6 around the cure payment after the Monday night,
7 Tuesday morning.

8 **Q. Do you recall any conversations at**
9 **all, without, you know, with regard to Mr. McDade,**
10 **Mr. Kelly, any conversations at all about whether**
11 **that accrual for 2 and a quarter billion for cure**
12 **was a good estimate, whether it was close to what**
13 **the real liability would be?**

14 A. Again, my focus through the course of
15 that week was around funding, around other
16 aspects, and I don't recall any discussions around
17 the cure payment.

18 **Q. Were you involved in any discussions**
19 **surrounding the comp accrual shown on that**
20 **schedule?**

21 A. I don't recall being a part of any
22 discussions around the comp.

23 **Q. Did you ever develop an understanding**
24 **as to whether the accrual for comp on that**
25 **schedule bore any relation to the actual accruals**

Page 211

1 LOWITT - HIGHLY CONFIDENTIAL
2 but it would be largely similar but not
3 necessarily identical.

4 **Q. Now, with respect to this, on**
5 **Exhibit 19, the annotations for assumed**
6 **liabilities for comp and cure, did you ever have a**
7 **discussion with Mr. Kelly about the amount that**
8 **was accrued for cure in that schedule?**

9 A. You said the amount that was accrued
10 for cure?

11 **Q. You see the amount next to "cure"**
12 **there is 2 and a quarter billion?**

13 A. I do.

14 **Q. Did there come a time after that**
15 **schedule was prepared where you had a discussion**
16 **with Martin Kelly about whether that number was**
17 **too high?**

18 A. Yeah, I have no recollection of
19 discussions with Martin about a cure payment.

20 **Q. Do you have any recollections of any**
21 **discussions with Mr. McDade where he was informed**
22 **that that number was too high?**

23 A. I have -- I don't recall a
24 conversation with Bart about that.

25 **Q. Do you generally recall any point**

Page 213

1 LOWITT - HIGHLY CONFIDENTIAL
2 for comp at Lehman?

3 MR. BERNSTEIN: Objection,
4 mischaracterizes the document.

5 **Q. I am sorry, I am getting tired too.**
6 **Let me rephrase the question.**

7 **Did you ever develop an understanding**
8 **as to whether a \$2 billion accrual for comp was a**
9 **good estimate?**

10 A. My understanding of the 2 billion was
11 that it was a negotiated number between Barclays
12 and Lehman, that it included the cash bonus, as
13 well as sort of stock and other forms of
14 compensation.

15 So the fact that it was a \$2 billion
16 number which was larger than the sort of accrual
17 for cash bonus didn't surprise me.

18 **Q. Is the effect of that enlargement of**
19 **the number over the accrual for -- accrual for a**
20 **cash bonus, to increase the consideration Barclays**
21 **is shown to pay by assuming liabilities?**

22 A. I don't see it in that way. I see it
23 as an agreement that \$2 billion of compensation in
24 the form of cash bonus and stock would be
25 available for Lehman employees.

LOWITT - HIGHLY CONFIDENTIAL

Q. Was it agreed to that amount, \$2 billion, simply so assets and liabilities would balance on Exhibit 19?

A. The comp number at 2 billion was consistent through earlier iterations of this that we have been through, so it wasn't a number that made these balance. It was one of the inputs that had been consistent based on the discussions through the evening and morning.

Q. Were the -- were the numbers for comp and accrual on that balance -- on that, on Exhibit 19, just plug numbers?

A. No. The comp number was the number that was the number that was agreed between the parties, and 2 and a quarter was the estimate that Martin generated on that evening for what the cure payment items were going to be.

Q. It was Martin who generated that number?

A. That's my recollection.

Q. Tell me what you remember about Martin generating that number. Martin is Martin Kelly?

A. Martin Kelly.

My own specific recollection was

LOWITT - HIGHLY CONFIDENTIAL

negotiations were proceeding. I obviously was interested in how it was going.

Q. And in the e-mail below yours saying hooray, from Berkenfeld to McDade, Berkenfeld writes, "JP Morgan blinked. They agreed to cancel the 7.4 billion collateral purchase."

Do you understand what that is a reference to?

A. I don't know.

Q. Do you know if at the time you did have an understanding, even if you don't remember it today?

A. I don't have any recollection other than I am sure that my hooray with three exclamation points was about we are starting the closing. That was a huge relief, that after all this, the transaction was going to close.

Q. I am going to ask you not to say hooray, but I don't have any further questions. Let's just change some seats so the court reporter can hear.

LOWITT - HIGHLY CONFIDENTIAL

talking with Martin on that -- either the Monday night or Tuesday morning about the need to estimate that and the difficulties associated with it, given that we didn't have sort of daily balance sheets associated with LBI, and there was a need to estimate it, and Martin went through some process to estimate it, which I don't recall him taking me through. He would just have provided the estimate.

Q. I am showing you, sir, what has previously been marked as Exhibit 45. Have you seen this document before?

A. I have not.

Q. Do you recall writing to Mr. Berkenfeld, Mr. McDade, Mr. Kirk, Mr. Tonucci and Mr. Seery in the early morning hours of Monday, September 22, and commenting on the fact that the closing had started?

A. I don't recall it specifically.

Q. Do you recall sending e-mails back and forth inquiring as to where things stood on the closing?

A. I mean we have been through Exhibit 227, where I was asking Paolo how the

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EXAMINATION BY
MS. TAGGART:

Q. Mr. Lowitt, I am Erica Taggart and I represent the committee.

A. The committee?

Q. The official committee of unsecured creditors. We are special counsel for the committee and we're the law firm of Quinn Emanuel.

A. So the creditors' committee?

Q. Yes.

Before the closing did you have any other outstanding offers of employment if you did not move to Barclays?

A. I didn't have outstanding offers, but I had been in conversations with various other institutions.

Q. Do you remember now what those institutions were?

A. I had some conversations with Citadel.

Q. And any others?

A. That was -- that's one that I had probably the most conversations with.

Q. Did you get to the point of discussing any terms of employment with Citadel prior to the

1 **LOWITT - HIGHLY CONFIDENTIAL**
2 **closing?**

3 A. I did not.

4 **Q. Do you know one way or the other**
5 **whether Citadel was prepared to offer you any**
6 **terms that were commensurate with what Barclays**
7 **was offering you?**

8 MR. BERNSTEIN: Objection, vague and
9 ambiguous.

10 A. The role that I was in discussions
11 with Citadel was a very senior role at a major
12 hedge fund, but we did not discuss terms
13 specifically. It didn't get to that point.

14 **Q. Now, I want to switch gears for a**
15 **minute and talk about the repo transaction, and I**
16 **understand that the general idea was that Barclays**
17 **was going to step into the shoes of the Fed and**
18 **take the collateral that had been pledged to the**
19 **Fed as part of a repurchase agreement.**

20 **Do you generally recall that subject?**

21 A. I do.

22 **Q. Was all of the collateral that was**
23 **pledged to the Fed as part of the repurchase**
24 **agreement ultimately given to Barclays?**

25 A. Again, I don't know whether some of

1 **LOWITT - HIGHLY CONFIDENTIAL**
2 that collateral was held by Chase or whether all
3 of that collateral was moved to Barclays. That
4 was subject to that settlement that we referred to
5 earlier as occurring in the December time frame
6 between JP Morgan and Barclays.

7 **Q. Is it your understanding that some of**
8 **the collateral that was pledged to the Fed did not**
9 **make it over to Barclays?**

10 A. Again, I don't know with certainty
11 whether all the collateral that was in the Fed
12 repo made it over to Barclays. I believe the
13 majority did. I can't say whether all did because
14 I don't have the details of the settlement between
15 JP Morgan and Barclays.

16 **Q. Do you know if there was collateral**
17 **that went to Barclays as part of the triparty repo**
18 **with Bank of New York, Barclays and Lehman that**
19 **was not part of what was pledged to the Fed?**

20 A. Again, I don't know all the collateral
21 that made it into BoNY because of the operational
22 difficulties with Chase and Chase's activity
23 moving collateral from Chase to BoNY.

24 **Q. Do you know who would know that?**

25 A. Well, the people who would have the

1 **LOWITT - HIGHLY CONFIDENTIAL**
2 best view of that would probably be Paolo Tonucci
3 and Mr. Blackwell.

4 **Q. Do you know whether it was someone at**
5 **JPMC or someone at Lehman who made the decision**
6 **about what of the securities that were pledged to**
7 **the Fed were going to be transferred to Barclays?**

8 A. I don't know with certainty. I would
9 imagine that it was -- there were communications
10 going on between Lehman operations and people at
11 Chase to effect the movement of collateral from
12 Chase to BoNY.

13 **Q. Were you involved at all in**
14 **discussions of whether residential mortgage-backed**
15 **securities would be part of the transaction**
16 **between Lehman and Barclays?**

17 A. I wasn't part of the negotiations or
18 the determination of which assets would be
19 included. I am assuming you are referring to now
20 the sort of earlier transaction that was discussed
21 on the Monday and Tuesday.

22 **Q. Well, do you know one way or another**
23 **whether -- have you heard the term "Resi's" in**
24 **connection with this transaction?**

25 A. There may well have been Resi's that

1 **LOWITT - HIGHLY CONFIDENTIAL**
2 were part of the transaction, I can't say for
3 certainty whether they were or they weren't.

4 **Q. So just to be clear, do you know one**
5 **way or the other whether any residential**
6 **mortgage-backed securities were transferred to**
7 **Barclays as part of the transaction with Lehman?**

8 A. I don't know with certainty.

9 **Q. You also discussed earlier that there**
10 **was a presentation to the creditors committee the**
11 **weekend prior to the closing that showed a**
12 **schedule of unencumbered collateral. Do you**
13 **recall that?**

14 A. I don't think it was a presentation,
15 but I do recall that a schedule of unencumbered
16 collateral that was going to be included as a
17 component of the deal was shared with the
18 creditors committee.

19 **Q. How do you know that?**

20 A. I was at the Weil offices and the
21 creditors were in a -- the creditors committee
22 were in one of the rooms at the Weil offices.

23 **Q. Were you present during that**
24 **presentation to the committee?**

25 A. Again, it wasn't a presentation. I

1 LOWITT - HIGHLY CONFIDENTIAL
2 think it was a delivery of a schedule.

3 **Q. Were you present when there was a**
4 **delivery of a schedule?**

5 A. I don't have a precise recollection of
6 that.

7 **Q. Do you know who did the delivery?**

8 A. I don't know precisely. I would --
9 again, I'm speculating, but I think it would have
10 been either Paolo Tonucci or Robert Azerad.

11 **Q. Do you know if any other documents**
12 **were transmitted to the committee along with that**
13 **schedule identifying unencumbered collateral?**

14 A. I don't know whether they received
15 additional information. They may well have, I
16 don't know.

17 **Q. Do you know one way or the other**
18 **whether there was any discussion of the value of**
19 **that unencumbered collateral in the delivery of**
20 **that schedule to the committee?**

21 A. Again, I think that the schedule was
22 delivered to the committee. I'm not aware of
23 specific discussions in relation to the valuation.

24 **Q. You also testified this morning about**
25 **your understanding of the deal as it closed and**

1 **LOWITT - HIGHLY CONFIDENTIAL**
2 **you described your sense of many of the elements**
3 **of the transaction. Do you recall that part of**
4 **your testimony?**

5 A. I do recall that.

6 **Q. And I think you listed some different**
7 **pieces of the transaction of value that was**
8 **ultimately received by Barclays generally?**

9 A. My recollection is that I talked about
10 different elements of the transaction.

11 **Q. Do you have a sense of what Barclays**
12 **gave in the deal to Lehman?**

13 A. I am sorry, can you be more specific
14 about what you mean by what Barclays gave to
15 Lehman.

16 **Q. Sure. So if I understand your**
17 **testimony from earlier, you listed some different**
18 **things that Lehman ended up transferring to**
19 **Barclays in the transaction, including**
20 **unencumbered collateral and the 15c3 and some**
21 **securities that were related to the repo. Do you**
22 **recall that?**

23 A. I do.

24 **Q. What did Lehman receive from the**
25 **transaction?**

1 **LOWITT - HIGHLY CONFIDENTIAL**

2 A. Again, what Lehman received was
3 negotiated by other parties and I don't know the
4 details of all of those items. I know they got
5 consideration for the building. I know they
6 received some amount of cash and I know there was
7 a TSA agreement that was signed which required
8 Barclays to provide a number of services to
9 support the various estates. And there may be
10 others, I'm not familiar with all of them, all
11 other items.

12 **Q. And in connection with the repurchase**
13 **agreement, they received 45 billion dollars in**
14 **cash?**

15 A. Essentially, they received, you know,
16 45 billion dollars of cash which then had to be
17 paid to the Fed to replace the repo that was done
18 by the Fed.

19 **Q. For the securities that Barclays**
20 **received as part of this repurchase agreement, did**
21 **it assume any liabilities related to those**
22 **securities?**

23 MR. BERNSTEIN: Objection, calls for a
24 legal conclusion.

25 A. I'm afraid I don't understand what you

1 **LOWITT - HIGHLY CONFIDENTIAL**
2 mean by accepted liabilities.

3 **Q. Well, maybe we could take a look at**
4 **Exhibit 19 and that's the schedule -- this is the**
5 **version that was marked final.**

6 A. Everyone's favorite schedule.

7 **Q. It is everyone's favorite schedule.**
8 **So putting aside the questions I just**
9 **asked, focusing on this schedule, did you have**
10 **an understanding of what was listed under the**
11 **liability section?**

12 A. Yeah, but the repo that we have just
13 been talking about was what was transacted on the
14 Thursday and it replaced this transaction.

15 **Q. I understand and it is my fault that I**
16 **switched two gears, but I just for a minute want**
17 **to now focus on this schedule and the way it**
18 **reflected the deal that was in place as of**
19 **September 16 at 11:18 a.m. Did you have an**
20 **understanding of what these numbers listed under**
21 **liabilities were meant to reflect?**

22 A. I think these were liabilities that
23 Barclays would take on, whether those were the
24 short positions that LBI held or they would have
25 to step in for -- they would have to assume the

1 LOWITT - HIGHLY CONFIDENTIAL
2 liability of some of the short term funding.
3 **Q. Was there a relationship between the**
4 **categories of assets that were listed, such as**
5 **government and agriculture, with assets and the**
6 **liabilities that were listed under that same**
7 **category in the other column?**
8 A. Those are agencies, so it is
9 government and agencies.
10 **Q. Excuse me?**
11 A. That's OK. Those would have been
12 short positions in governments and agencies is 21
13 billion, and the 40 would have been the long
14 positions in governments and agencies.
15 **Q. Do you know how the numbers were**
16 **arrived at that were listed in the liabilities on**
17 **this schedule?**
18 A. Again, they were the collection of a
19 number of people in finance identifying what were
20 the short positions that were associated with
21 those assets that were going to be acquired by
22 Barclays.
23 **Q. Were the numbers listed in the**
24 **liabilities on Exhibit 19 subject to negotiation**
25 **between Barclays and Lehman?**

1 LOWITT - HIGHLY CONFIDENTIAL
2 A. No, I don't think I said that.
3 **Q. Was there any -- was there any effort**
4 **made to match assets and liabilities?**
5 MR. BERNSTEIN: Objection, vague and
6 ambiguous, but you may answer.
7 A. I mean the, you know, adjusted total
8 assets and the total of liabilities do match, so
9 one would assume from that that there was some
10 effort to match assets and liabilities in this
11 schedule. Whether this schedule represents the
12 agreement that was agreed to by Barclays again is
13 subject to the negotiators and what the
14 negotiators agreed to.
15 **Q. First let me find out if I can**
16 **understand what I think you testified to before.**
17 **I think it was in just -- according to my notes,**
18 **when you were talking about what you were doing**
19 **that night, you collected input from parties about**
20 **the asset part of the transaction, you got input**
21 **from the business about which assets Barclays**
22 **would be interested in, and I believe you made**
23 **some sort of testimony about there was an effort**
24 **to match assets and liabilities. I understand**
25 **that is paraphrasing and not exactly what you**

1 **LOWITT - HIGHLY CONFIDENTIAL**
2 A. Again, I wasn't party to those
3 discussions so I can't answer that question for
4 you. I am sorry.
5 **Q. Do you know one way or another whether**
6 **they reflected Lehman's view of what the**
7 **liabilities would be or an opinion based on what**
8 **Barclays thought the liabilities would be?**
9 A. I can't say with certainty. I think
10 these were probably the liabilities as Lehman
11 assessed them with input from folks at BarCap to
12 the extent that they were uncomfortable accepting
13 some of the short positions.
14 **Q. Do you know if in the ultimate**
15 **agreement, setting this aside, Barclays assumed**
16 **any liabilities related to short positions?**
17 A. Again, I don't know. As discussed,
18 you know, I wasn't party to the negotiations.
19 **Q. I think you also testified earlier**
20 **that you were involved in a -- there was some**
21 **effort made to match assets and liabilities I**
22 **think in conjunction with setting up the initial**
23 **deal on Tuesday the 16th.**
24 MR. HUME: Objection, mischaracterizes
25 prior testimony.

1 **LOWITT - HIGHLY CONFIDENTIAL**
2 **said, but do you recall any involvement that you**
3 **personally did in an effort to match assets and**
4 **liabilities?**
5 MR. BERNSTEIN: I am going to object
6 to the form of the question.
7 You can answer the last sentence which
8 was the question part.
9 A. Again, I think that the adjusted total
10 assets equals the total liabilities on this, so
11 some effort was undertaken to match assets and
12 liabilities per the schedule.
13 **Q. Were you personally involved in some**
14 **activity relating to matching assets and**
15 **liabilities?**
16 A. Again, I have no precise recollection,
17 but I may well have been involved in that.
18 **Q. But like you testified, you did notice**
19 **that the final exhibit does have a matching in**
20 **that the adjusted total assets is the same number**
21 **as the total liabilities? You see that?**
22 A. I do see that.
23 **Q. And do you know if that was**
24 **coincidence or that was something that was**
25 **purposeful?**

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MR. HUME: Objection, vague and ambiguous.

A. Yeah, I can't say -- I can't say anything to you other than the totals do equal one another.

Q. If I look, Exhibit 200, which is I believe the earlier -- an earlier version of the schedule that has some annotations by yourself, and here you see there are some -- the numbers that are listed under adjusted total assets is not the same as total liabilities. You see that?

A. I do see that.

Q. Do you know when -- did there come a time that you noticed that the schedule had those matching of assets and liabilities?

A. Again, I don't have a specific -- this -- I don't have a specific recollection of that. I do know that through the course of the evening and the morning, these were updated with additional information, and as you point out, the Exhibit 19 does have assets and liabilities equal to one another.

Q. Switching topics again, I also want to take you to the conversation that you had with

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A. I mean, it is not based on specific knowledge of what they were thinking about. It is based on my sense of what would happen in a -- in any circumstance where a securities firm was selling a very large block of assets.

They would expect that whoever was purchasing that large block of assets, particularly at a time of great market uncertainty -- which certainly the week after the Lehman bankruptcy was a time of great market uncertainty -- that they would pay less for those assets because they were making such a large purchase and how much less they would pay would also be determined by the amount of volatility in the marketplace and how given that volatility, the asset prices could reduce before they were able to sell out their positions.

Q. Did you communicate with anyone at Barclays about whether the reason for their selection of price had to do with either the size of their purchase or the volatility of the market?

A. I don't recall specific conversation with people at Barclays about their approach to

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Mr. McDade and Mr. Ricci on Friday the 19th about the process of finding additional value. Do you remember that event?

A. I do.

Q. Was there any time given where you needed to find that amount of collateral by a certain time?

A. I don't recall a specific deadline for that.

Q. Did you have a sense for when that would be needed by?

A. I think my sense was the sooner, the better.

Q. You also testified a number of times about -- that the numbers -- let's start with, for example, listed on the assets in Exhibit 19 reflected a price that Barclays was willing to pay given the size of their purchase and the volatility of the market. Do you recall that?

A. I do.

Q. What is your basis of your testimony that that price was determined based on the factors of the size of their purchase and the volatility of the market?

LOWITT - HIGHLY CONFIDENTIAL

the valuation of the assets.

Q. What about anyone at Lehman? Did anybody at Lehman say that the price that Barclays was going to pay was based on the size of their purchase and the volatility of the market?

A. Again, I don't have a precise recollection of that. But again, I don't feel that that would have been an unusual view for anyone to have had. If I had spoken with Bart or Alex Kirk about that, I'm sure, I believe they would have agreed that that made sense. But I don't recall a specific conversation.

Q. Putting aside conversations with your lawyers and this discussion today, have you ever spoken to anybody about whether or not the price that Barclays paid was reflective of the size of their purchase and the volatility of the market?

MR. BERNSTEIN: Hold on. When you said putting aside conversations with your lawyers, you are including Barclays counsel?

MS. TAGGART: Yes.

MR. BERNSTEIN: OK, go ahead.

A. The transaction that actually took place was not this transaction. It was the repo

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2 transaction and the repo transaction, the
3 difference between the collateral delivered and
4 the cash received was driven by the standard
5 financing haircuts and so the actual transaction
6 that took place was different and there was no
7 requirement to hence operationalize this version
8 of adjusted assets being sold to Barclays.

9 **Q. I understand there is something that**
10 **happens after about the repo transaction, but I do**
11 **just want to focus on your testimony today, a**
12 **number of times, that the pricing that was, at**
13 **least in the original transaction from the 16th,**
14 **was based on the size of the purchase and the**
15 **volatility of the market. Putting aside your**
16 **conversations with counsel, have you ever**
17 **discussed that with anybody?**

18 A. I don't have a recollection of
19 discussing that specifically with anybody, but
20 again, I would just reiterate that the notion of
21 one firm buying a large block of assets from
22 another would involve a substantial bid offer
23 spread is one that would be broadly understood by
24 market participants.

25 **Q. What exactly were you told about the**

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2 **reason that these prices were less than what was**
3 **marked on Lehman's books referring to the prices**
4 **reflected on Exhibit 19?**

5 A. Again, I don't have a recollection of
6 a specific instruction with regard to that. I was
7 aware that Barclays were willing to purchase a
8 substantial quantity of assets from the Lehman
9 estate and that what they were willing to pay for
10 those assets was less than what those were marked
11 at based on the prevailing market prices.

12 **Q. Is there anything else that you**
13 **actually learned from somebody, either from**
14 **Barclays or Lehman, prior to September 22, about**
15 **the basis for the pricing that Barclays used in**
16 **the assets that it was willing to pay for these**
17 **assets?**

18 A. Again, I don't have anything specific
19 with regard to why Barclays were willing to pay
20 those prices for these specific assets. That was
21 their judgment of what they were willing to pay to
22 acquire this large quantity of assets.

23 **Q. You did testify just a bit ago that**
24 **you believed that some sort of discount based on**
25 **the size of the purchase or volatility of the**

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2 **market is something that happens when securities**
3 **firms are selling a large block of assets. Do you**
4 **recall that?**

5 A. I do.

6 **Q. Have you been in any transactions**
7 **where securities firms are selling large blocks of**
8 **asset?**

9 A. Well, in the, you know, in the prior
10 quarter, Lehman had sold substantial quantities of
11 assets in our efforts to manage down our legacy
12 positions. But I wasn't party to those specific
13 negotiations, but I was aware that when
14 counterparties were looking to purchase blocks of
15 assets, they were looking for a big bid/offer
16 spread associated with that.

17 MR. BERNSTEIN: Again, this may just
18 be the transcript, but what's written down
19 "big bid/offer spread."

20 THE WITNESS: A big bid/offer spread.

21 MR. BERNSTEIN: Good, my apologies.

22 **Q. Are you referring to specific**
23 **transactions?**

24 A. The transaction that I have in mind is
25 a sale of European residential securities to

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2 BlackRock.

3 **Q. Were you involved in those**
4 **negotiations?**

5 A. I was not.

6 **Q. How do you know that BlackRock wanted**
7 **a bid off the spread in association with the**
8 **transaction?**

9 A. That would have been reported to me by
10 Tom Humphrey who was engaged in discussions with
11 BlackRock.

12 **Q. Do you know what BlackRock was**
13 **intending to do with the assets that it purchased?**

14 A. No, I don't.

15 **Q. And do you know what the amount of**
16 **spread it negotiated for, BlackRock negotiated in**
17 **this other transaction?**

18 A. I don't recall precisely what the
19 spread was. It actually wasn't a consummated
20 transaction. It was one that was in negotiations
21 over the quarter end and didn't end up being
22 completed.

23 **Q. Is there any other transaction that is**
24 **informing your testimony that you believe that**
25 **generally when securities firms are selling large**

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blocks of assets, they require some sort of discount?

A. Again, I can't point to specific transactions, but it was my understanding that -- it is my understanding that that's how the market operates. And it does seem logical to me.

Q. Do you have any other factual basis besides your belief that that is logical?

A. I can't point to a specific transaction which effects that. I could --

Q. Anything else?

A. No.

Q. But your general belief based on logic that securities firms selling a large block of assets include this sort of discount -- how is your sense of how much that discount is compared to the haircut that financiers (sic) often require when they are giving cash for collateral?

MR. BERNSTEIN: Objection, vague and ambiguous.

A. I think those are just different things. One is negotiated by two parties, one of whom wants to sell assets in size quickly where the buyer has negotiating power and can extract a

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assets that were held back from Barclays?

A. Again, I think there was a schedule that was created that represented our best estimate of what the unencumbered collateral was and that was the schedule that was provided to the Lehman management and they then negotiated a deal with Barclays.

Q. But as far as you know, there was no unencumbered assets that you found in your search that were held back from the transfer to Barclays, is that correct?

MR. BERNSTEIN: Objection, no foundation. But go ahead.

A. Again, we came up with what we thought was the unencumbered collateral. We realize that had we had imperfect information and it may have been that there was additional collateral. It may have been that some of the collateral on the schedule was, in fact, encumbered and we were unaware of that. So it was a best efforts to come up with a schedule that reflected collateral that was not a part of the repo, as well as was unencumbered and available to be transferred to Barclays if that was what was agreed between the

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large bid/offer spread to transact. You know, financing haircuts are set based on sort of a market standard which establishes what the market believes they have to take possession of the collateral and sell off the collateral to generate cash, they will have to sell the collateral out at in order to realize the cash value that they have extended.

Can I take a short break?

Q. Sure.

(Recess)

Q. So I also want to ask you some questions about the search for unencumbered assets. As I understand that, there was a long process of trying to find what unencumbered assets Lehman had that could be transferred to Barclays, do you recall that?

A. I do.

Q. Of all the unencumbered assets that Lehman located, did it give all of those to Barclays?

A. I don't know the details of the transaction that was agreed between the parties.

Q. Are you aware of any unencumbered

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parties.

Q. I just want to focus on what you know. You were part of a search where you searched for any collateral that was unencumbered that could be transferred to Barclays. You were part of that search effort, right?

A. That's correct.

Q. And all of the unencumbered assets that you were able to locate that could be transferred, you communicated that to people at Lehman as assets that could be transferred to Barclays, right?

A. Yeah, that schedule was made available to people, that schedule was made available.

Q. And do you personally know of any of those assets that you found that were held back from the transfer?

A. Again, we had a schedule of assets that we believed was, were unencumbered and those assets were identified and included on a schedule and it summed around a billion, nine of value.

Q. You personally don't know of any assets that were determined to be unencumbered that were held back from the agreement with

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2 **Barclays, correct?**

3 A. I'm not aware at this point of any
4 collateral that was not included in that schedule
5 that we have talked about.

6 **Q. And that schedule refers to the**
7 **schedule of unencumbered assets that -- well,**
8 **maybe I should ask, what schedule are you**
9 **referring to when you say that all of the**
10 **unencumbered assets were included on the schedule?**

11 A. That we were aware of at that time
12 were included in the schedule of unencumbered
13 assets, I don't know if it is schedule B that I
14 think we have been referring to.

15 **Q. So is it your understanding that all**
16 **of the assets that you determined were**
17 **unencumbered and could be transferred were**
18 **included on a schedule that became schedule B to a**
19 **contract with Barclays?**

20 A. Again, I don't know that it became
21 part of the contract, but yes, all the assets that
22 we identified -- but again, I'll come back to make
23 sure there was no confusion, there may well have
24 been unencumbered collateral that we had not
25 identified and determined that it specifically was

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2 been collateral that actually was unencumbered but
3 we were unable to determine it, and as a result,
4 we would not have included it in that schedule.

5 The "we" I am talking about here is
6 very loose. I wasn't actually involved in
7 searching for pieces of collateral. I am
8 merely referring to the broad effort that was
9 going on involving operations and finance.

10 **Q. The broad effort that involved**
11 **operations and finance looked everywhere that it**
12 **thought there might be unencumbered collateral and**
13 **every collateral that it could determine really**
14 **was unencumbered, you put on schedule B, right?**

15 MR. BERNSTEIN: Two objections; no
16 foundation, asked and answered. This really
17 ought to be the last time.

18 A. Again, I -- I have just got to
19 reiterate what I think I have said in the previous
20 answers which is we looked broadly for all sources
21 of unencumbered collateral. When we -- when
22 people in operations and finance were able to
23 determine to the best of their judgment that it
24 was unencumbered, then it made it on to the
25 schedule. There was an understanding that there

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2 unencumbered and we knew that there may well have
3 been additional collateral that we were not able
4 to determine at that point was unencumbered but
5 there may have been. But what we had identified
6 to the point that you have been pressing on was
7 included in that schedule.

8 **Q. When you were searching for**
9 **unencumbered collateral, did you search everywhere**
10 **you thought that unencumbered collateral might be?**

11 A. Well, I think the search was broad,
12 but I mean in particular, there was -- there is
13 collateral in physical form that we were unsure
14 whether it was unencumbered or whether it had been
15 seized by one of the entities, so that in
16 particular was collateral that we just did not
17 know if it was unencumbered or not.

18 **Q. But in your search that you did prior**
19 **to the closing, you searched for everywhere that**
20 **there might be collateral that would be**
21 **unencumbered that could be transferred to**
22 **Barclays, right?**

23 A. Again, I keep saying the same thing
24 which is we looked to determine what collateral we
25 could determine was unencumbered. There may have

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2 was some collateral which, upon additional work,
3 might have been determined to be unencumbered and
4 people knew and recognized that.

5 **Q. While you have been at Barclays, have**
6 **you been involved at all in valuing the gain that**
7 **Barclays had upon acquisition, the gain of what it**
8 **received from Lehman?**

9 A. I've not been involved in that.

10 **Q. You also testified earlier today that**
11 **you were not yourself involved in documenting any**
12 **of the changes to the contract that followed the**
13 **court hearing, correct?**

14 A. I am sorry, can you be more specific
15 what you mean by changing the contract?

16 **Q. Sure. I think it was your**
17 **understanding that following the agreement that**
18 **was presented to the court, there was some sort of**
19 **documenting of that agreement?**

20 A. Yeah, there was a -- and we went
21 through it as one of the e-mails, there was a
22 documentation process that needed to take place to
23 reflect the agreement that was discussed.

24 **Q. Do you know who was involved in that**
25 **process?**

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A. Who was involved in the process of documenting?

Q. Yes.

A. I think the main law firm was Weil. Again, I don't know the specific people that were involved. I could speculate on who I think was involved.

Q. First, do you know anyone at Lehman who was involved in documenting the deal following the court hearing?

A. Yeah, I believe Steve Berkenfeld was involved, but I don't know with certainty because I didn't see him actually documenting things myself, but it would -- I would have expected Steve to have been involved in that effort.

Q. Anybody else?

A. I can't -- there are no specific names that I could give you. Again, I could speculate who I think was involved.

Q. Why don't you go ahead and speculate, but I understand you don't know for sure. But who are the people you personally might ask if you were trying to find out who documented the deal as it changed or documenting anything following the

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EXAMINATION BY
MR. OXFORD:

Q. Good afternoon, Mr. Lowitt. My name is Neil Oxford. I am with the law firm of Hughes, Hubbard & Reed. We represent the SIPA trustee.

Could you have in front of you Exhibit 219. If you could direct your attention to the part of the subject line in the last sentence where it says, "We did find 5 billion of exchange listed options which we are investigating."

I believe you testified that you, when you investigated, you found what that was already included as part of the business transaction.

A. Yes.

Q. Is that correct?

A. That is correct.

Q. Can you explain that a little further, which part of the business transaction was this 5 billion dollars a part of?

A. Well, again, I don't have a recollection of the 5 billion specifically, so again, I have no recollection of where that came from. I do know that the exchange-listed sort of

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court hearing.

A. Well, again, I think the people who negotiated the deal would have been involved. I think Steve, Steve Berkenfeld would have been involved. I think the senior lawyers from Weil would have been involved. I would guess that Alex Kirk may have been involved. But again, I'm basing that not on any specific knowledge, I'm basing that on my understanding of sort of the roles that different people played at Lehman.

Q. On Sunday -- where were you Sunday, at Weil's office, on the Sunday, September 21st, the day before the closing?

A. Yeah, I spent a lot of the day at Weil.

Q. Who else from Lehman was there at the office with you?

A. Paolo Tonucci was there, Robert Azerad was there, Bart McDade was there. I think Alex Kirk was there, that's my recollection, and Steve Berkenfeld was there. I'm sure there were others. Those are the -- the listing includes those.

MS. TAGGART: OK, that is all the questions I have.

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options business was one that we came to understand was included in the deal, that that business was being taken over by Barclays in its entirety and that was part of what had been agreed to on the, I guess, on the Tuesday.

Q. Did that business deal, to your understanding, sir, change at any point?

A. Again, I wasn't part of the final -- I wasn't aware of how the whole thing was coming together in the final version. But given that it was included -- the business itself was included as part of the earlier transaction, the assumption that we were working with was it would be included in the remaining transaction and so we didn't continue to do any additional work on looking for value in the exchange-listed options.

Q. Just so I am clear, the exchange-listed options you are e-mailing Mr. McDade about in Exhibit 219 don't form any part of the repo that we have been discussing today, correct?

A. That's correct. That would have -- the repo would have been the repo and then we were looking for value in items away from that. There

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2 was a long list that was generated, including
3 15c3, the good faith lock-up, the TBA settlement,
4 FX settlement, and there was obviously an item
5 that somebody had identified as a potential source
6 of value which was exchange-listed options and
7 that was dropped from our investigation because
8 our understanding was that it was already included
9 in the transaction as a stand-alone business.

10 **Q. And from whom did you gain that**
11 **understanding, sir?**

12 A. I don't have a precise recollection of
13 who I would have got that from. I think that -- I
14 mean to the best of my recollection, that was
15 something that Paolo Tonucci had looked into and
16 communicated, but I do know -- I do recall that we
17 didn't continue to investigate exchange-listed
18 options. Our focus was on the 15c3 and
19 unencumbered collateral.

20 **Q. Was it your understanding, sir, that**
21 **Barclays was to step into the shoes of Lehman**
22 **insofar as Lehman owned exchange-listed options?**

23 A. Again, I didn't have a sense of what
24 was agreed to between the parties with regard to
25 this. What I do recall was that this was a

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2 **Q. In the context of the use of that**
3 **phrase "exchange-listed options" in this document,**
4 **sir, would that include short options as well as**
5 **long options?**

6 A. Again, in -- for the purposes of this,
7 we were engaged in an exercise to identify
8 additional sources of value and that, the
9 investigation suggested that we would not look for
10 value in exchange-listed options. So that was --
11 we didn't do any work on exchange-listed options.
12 So what actually made it into the transaction was
13 what was agreed to between the parties and really
14 we were just, we didn't pursue as a source of
15 value which could be included in the transaction
16 potentially.

17 **Q. Again, I think I have got this, but**
18 **just so I am clear, to the best of your knowledge,**
19 **the exchange-listed options were never removed**
20 **from the deal between Barclays and Lehman?**

21 A. I'm not aware but -- I'm not aware
22 that -- I'm not aware either way.

23 **Q. OK. Do you have any knowledge as to**
24 **whether the 5 billion dollars that's estimated**
25 **here for exchange-listed options includes margin**

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2 business that was included in the transaction and
3 didn't represent a place where we should
4 investigate to determine additional sources of
5 value. How precisely Barclays was going to engage
6 with regard to this business, I wasn't aware of.

7 **Q. Can you give me your definition of**
8 **what you meant by exchange-listed options in**
9 **Exhibit 219, please?**

10 A. Again, I --

11 **Q. What kind of assets were covered in**
12 **exchange-listed options as you used it in this**
13 **document?**

14 A. Again, I don't recall precisely --
15 there was sort of a list that identified potential
16 sources of value and exchange-listed options had
17 made it to the list and then was removed from the
18 list because it was already included in the deal.
19 So that's what I would say around that.

20 If you are asking me the more general
21 question away from this about what are
22 exchange-listed options, they are, you know,
23 derivative contracts that are listed on an
24 exchange and sort of collateralized with that
25 exchange.

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2 **and deposits at various exchanges?**

3 A. Again, I -- I have no recollection of
4 where the 5 billion came from or what it reflects.
5 It was something that we looked at to determine if
6 it was a potential source of value, as were
7 others, and determined that it wasn't a place we
8 needed to look because it was already included in
9 the deal, was my recollection of why we didn't.
10 We found, for example, in the TBA and FX
11 settlements that there was no value in those
12 items. So that was the investigation that we were
13 doing on the Friday.

14 **Q. Do you recall having any conversations**
15 **at any time, sir, in the week from 15th of**
16 **September until the closing on the 22nd with**
17 **anybody other than Mr. Tonucci about the inclusion**
18 **or otherwise of exchange-listed options in the**
19 **transaction between Lehman and Barclays?**

20 A. Again, I have no recollection of any
21 conversations besides the one with Paolo.

22 **Q. Are you able to testify any further**
23 **about the details of your conversation with**
24 **Mr. Tonucci?**

25 A. Again, the only thing that I recall

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2 was that this was not an item that we needed to
3 continue to investigate because it was already
4 included in the deal.

5 **Q. OK. I am handing what you has**
6 **previously been marked in these depositions as**
7 **Exhibit 95B. If you could take a moment to review**
8 **that document, I am going to focus primarily on**
9 **the e-mail, and let me know when you have had a**
10 **chance to do that.**

11 A. I've read through the e-mail trail.

12 **Q. Do you recognize this document, sir?**

13 A. I don't have a recollection of this.

14 **Q. You see that it is an e-mail that was**
15 **sent to you by Francis Pearn on Sunday the 21st of**
16 **September. Do you see that?**

17 A. I do see that, yes.

18 **Q. And the time here is reflected, and**
19 **GMT, so it was sent to you at 4:03 p.m. eastern?**
20 **Do you have any understanding of why Mr. Pearn**
21 **would send this document to you?**

22 A. I mean, I don't know specifically why
23 he would have. I was the CFO of the firm and
24 Frank was in the finance department, so that might
25 be a reason why he would have included me in it.

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2 **Q. Are you familiar with the type of**
3 **report that is attached to this e-mail, sir?**

4 A. I mean, I can't recall ever looking
5 through this report or one like it.

6 **Q. Reading the e-mail that Mr. Pearn**
7 **sends to you and others, it says "Craig Jones**
8 **provided the OCC statements as of September 22 for**
9 **the LBI 074 account. The first statement shows**
10 **collateral value of 522 million (cash and**
11 **government securities) in LBI. The second file**
12 **details approximately 2 billion of collateral,**
13 **(letters of credit, cash and security). Craig and**
14 **Dan confirmed these balances with the OCC and can**
15 **answer questions you may have."**

16 **Do you see that?**

17 A. I do.

18 **Q. Would you agree with me that this**
19 **e-mail Mr. Pearn -- withdrawn.**

20 **Would you agree with me that the**
21 **e-mail that Mr. Pearn sends to you reflects that**
22 **there is substantial collateral value held by LBI**
23 **at the OCC?**

24 A. Well, it suggests there is a lot of
25 collateral at the OCC. My recollection was at

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2 some point during the week that because Lehman was
3 no longer posting margin, that the OCC sold out
4 the Lehman position and would have -- would have
5 been satisfied with whatever the obligations it
6 had were and I don't know how that -- how much
7 collateral was left after that.

8 **Q. If you look at the first attachment,**
9 **sir. Do you see in the middle of the page at the**
10 **top it says "activity date"?**

11 A. I do.

12 **Q. And that date is 9/22/08, correct?**

13 A. Yes.

14 **Q. And below, there is a system date and**
15 **that date is 9/20/08?**

16 A. Yes.

17 **Q. Does that refresh your recollection as**
18 **to the collateral that LBI owned that was posted**
19 **at OCC as of the date of this e-mail?**

20 A. Again, I -- I don't recall spending
21 any time around the collateral at OCC on the
22 Sunday or on any of the other days. To say we
23 were engaged in, you know, efforts to fund the
24 firm, to effect the repo, and to identify sources
25 of value and really, I didn't focus any attention

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2 on this over that time period.

3 MR. OXFORD: OK, that is all I have on
4 that document.

5 (Exhibit 228, e-mail dated 9/21/2008
6 at 8:09:34 p.m. marked for identification,
7 as of this date.)

8 A. Do you mind if we take a short break?

9 **Q. Sure.**

10 (Recess)

11 **Q. Mr. Lowitt, I would like to hand you**
12 **what I have marked as Exhibit 228.**

13 A. Yes.

14 **Q. Which is an e-mail from Jerry Reilly**
15 **to you, Mr. Kelly and Mr. O'Meara entitled, "VIX,**
16 **V-I-X Statements," and on Sunday, the 21st, 4:08**
17 **eastern in the afternoon. Why don't you take a**
18 **moment to read through that document. Again, I am**
19 **going to ask you mostly about the e-mail rather**
20 **than the attachments. Let me know when you have**
21 **had a chance to do that?**

22 A. I have.

23 **Q. Do you recognize this document, sir?**

24 A. I don't.

25 **Q. In the chain below where it is**

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forwarded to you, Mr. Michael Neilson writes to
Mr. Francis Pearn and others: Here are the
clearing house runs. Do you know what the
clearing house runs are?

A. No, I don't.

Q. Do you know what the reference to VIX
is in the subject line?

A. I mean, I don't know. The VIX is an
instrument that is associated with the volatility
of the equity markets.

Q. Mr. Reilly writes to you, "This has
been confirmed as a good balance. We are going to
send to BarCap who is looking for our positions
and balances, 507 M" -- which I take it to be 507
million? Do you see that?

A. I see that. I don't know if that is
millions or thousands. But I can see it is 507 M.
I'm sure you could show me that it is millions.

Q. I'm sure I could, but I'm not so sure
it matters if you don't remember the document. Do
you remember having -- withdrawn.

Do you have any understanding of why
Mr. Reilly sent you this e-mail?

A. I don't know why he did. I imagine he

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was keeping -- he felt he should include me in a
mail because I was the CFO and he was reporting to
me and it would be something that he felt I would
want to see.

Q. From your review of this e-mail, do
you have an understanding of what he was keeping
you in the loop on?

A. I mean, that Barclays was looking for
information and that this was part of the
information and what they were looking for.

Q. Does this refresh your recollection
about the inclusion or otherwise in the business
deal between Lehman and Barclays of
exchange-traded derivatives?

A. Again, exchange-traded derivatives, I
was -- I spent no time on it. It wasn't -- it
just wasn't a focus either for me during that
period.

Q. You don't recall any conversations
with Mr. Kelly about that subject?

A. I don't recall any conversations with
Martin about exchange-traded derivatives or about
this.

Q. What about Mr. Reilly, same question,

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did you have any conversations with him about the
inclusion or otherwise in the assets going to
Barclays of exchange-traded derivatives or any
assets to secure those derivatives?

A. I have no recollection of discussions
with either Jerry or Martin or Chris or any of the
folks on this e-mail about that.

MR. OXFORD: That is all I have on
this document.

(Exhibit 229, e-mail dated 9/21/2008
at 6:20:35 p.m. marked for identification,
as of this date.)

MR. BERNSTEIN: By the way, I
actually -- I should do this -- I'm assuming
with this and the prior document, which are
not Bates stamped, that Counsel has a -- it
is Counsel's understanding that these are,
in fact, attached documents in the real
world?

MR. OXFORD: Yes, that is my
information.

Q. Mr. Lowitt, take your time and
whenever you're ready, let me know when you have
had a chance to review Exhibit 229.

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A. Yeah, I have looked at it.
Q. It looks to me to be an e-mail from
Robert Azerad to Gary Romain at Barclays, James
Walker at Barclays, T.J. Gavenda, also at
Barclays, and you and others at Lehman are copied,
is that correct?

A. That's what it suggests on the first
page.

Q. It was sent on the Sunday, 21st of
September at 2:20 eastern. The subject is
"updated opening balance sheet." Do you see that?

A. I do.

Q. Do you recognize this document?

A. I don't recognize it.

Q. Did you have any responsibility,
direct or otherwise, for the creation of an
opening balance sheet for Barclays?

A. I am sorry, could you just repeat, did
you have any responsibility --

Q. Did you have any responsibility,
direct or otherwise, for the creation of an
opening balance sheet for Barclays?

MR. BERNSTEIN: Objection, vague and
ambiguous.

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You may answer.

Q. Let me ask it this way: Did you have any responsibility for creating an open balance sheet for Barclays?

A. I don't believe I had responsibility for creating an opening balance sheet for Barclays. I think we were -- we needed to provide information to Barclays so that they could go through their process and there was pieces of information that they would have looked to from us to provide, but that, you know, establishing an opening balance sheet was going to be their responsibility.

Q. OK, did Mr. Azerad work for you?

A. Robert reported in to Paolo and Paolo reported to me, so Robert was in my chain.

Q. Do you have any understanding that Mr. Azerad created the opening balance sheet that is attached to this e-mail?

A. Again, I'm not in a position to say who created this. I just have no knowledge of who would have done this.

Q. Safe to say then you did not have any involvement in creating this opening balance

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Q. One of those additional sources of value that you have testified about at length is the 15c3 lock-up release, correct?

A. Yes.

Q. And that's shown is there as 1 billion dollars.

A. That's what it is shown here.

Q. You have already testified about a search for other unencumbered assets that you believe were valued at approximately 2 billion dollars, correct?

A. At 1.9 to 2 billion.

Q. 1.9 to 2 billion. Do you see anywhere on this spreadsheet where those unencumbered assets balance at 1.9 to 2 billion dollars are reflected?

A. I don't see it on this schedule. But again, I don't think that the schedule would necessarily have represented the transaction that was agreed to. Also -- another example, the 15c3 lock-up release we talked about earlier was agreed to at around 760 million dollars.

Q. The 5 billion dollars of exchange-listed options that you included in the

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sheet?

A. I can't recall having any involvement in creating this.

Q. You see that it was sent at 2:20 p.m. on Sunday the 21st?

A. I do see that.

Q. If you take a moment to review the balance sheet and then tell me if, to the best of your recollection, it accurately reflects the business deal between Barclays and Lehman as you understood it at the time the e-mail was sent?

A. Again, I -- I didn't know all the items of what went into the business deals, so what I would have been aware of was that there was a repo transaction, that there was the assumption of liabilities for sort of bonuses or cure payment, although again, I didn't know that with any certainty because I didn't know that that made it into the final transaction. And I know that we had been looking for, you know, additional sources of value but I can't say more than that or how that would have been reflected in a balance sheet or what Barclays would have wanted to show in their opening balance sheet.

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subject line of Exhibit 219, do you see those exchange-listed options listed anywhere in the opening balance sheet marked as Exhibit 229?

A. I don't see it listed.

Q. Do you have any understanding of why it would not be listed?

A. Again, I don't know who pulled this schedule together and I don't know the amount of knowledge they would have had about all the elements of the deal. And even if they had known about that item, I don't know if they would have had any knowledge of what that was actually worth, again, it wasn't something that I was aware of any work that went on to determine if there was or how much value there was in that and so just wouldn't have known how -- I don't know how anybody would have reflected it on the balance sheet.

Q. Well, they could have used the 5 billion dollar figure that you told Mr. McDade that you had found in Exhibit 219, right?

A. We didn't say we had found it. We said in that exhibit that there was exchange-listed options. I don't know where the 5 billion came from, and I don't know if 5 billion

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2 was right. But you're right, somebody could have
3 put that there. But again, I don't know who put
4 this together and I don't know what they were
5 aware of and I, again, don't know what the real
6 valuation of exchange-listed options business was.
7 And I wasn't aware of any work that was done to
8 determine that.

9 **Q. Could you just briefly have Exhibit 19**
10 **in front of you, please?**

11 A. Sure, 19. Do see anywhere on Exhibit
12 19 a description or a figure that includes the
13 exchange-listed options that you referenced in
14 your e-mail marked as Exhibit 219?

15 MR. HUME: Objection, vague and
16 ambiguous.

17 A. Again, I don't know how
18 exchange-listed options turn up on balance sheets.
19 So I wouldn't know this. There is derivative
20 lines here, it's possible that it is in those
21 lines, but again, I'm just speculating. I don't
22 know where it would have turned up here.

23 **Q. OK. You testified earlier about a**
24 **conversion, sir. Do you remember that testimony?**

25 A. The conversion.

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2 **Q. You used the word "conversion"?**

3 A. Actually somebody else used the word
4 "conversion," but I did say that I understood it
5 to be the movement of collateral from JP Morgan
6 Chase to BoNY to reflect the replacement of the
7 Fed repo with the Barclays repo.

8 **Q. And the way in which you used that**
9 **phrase "conversion" has nothing to do with the OCC**
10 **or exchange-traded derivatives, correct?**

11 A. That is correct.

12 **Q. You mentioned, sir, that the subject**
13 **of discussion on Sunday the 21st of September was**
14 **a series of questions about what would happen if**
15 **Barclays steps into the shoes of Lehman in the**
16 **coming weeks. Do you remember that testimony?**

17 A. I do, yes.

18 **Q. Focusing on the DTCC for the present,**
19 **did you tell me what your recollection is of any**
20 **discussions about Barclays stepping into the shoes**
21 **of Lehman at DTCC?**

22 A. I was aware that on the Sunday, there
23 were ongoing discussions between the Barclays
24 representatives and representatives from DTCC
25 around how that would be covered, but I was not

1 LOWITT - HIGHLY CONFIDENTIAL
2 party to the resolution of those -- of that.

3 **Q. With whom did you discuss that issue,**
4 **sir?**

5 A. I don't recall discussing it with
6 anybody. There was a large forum that included
7 participants from a number of different --
8 representing Barclays and JP Morgan and DTCC and
9 creditors and others and my recollection is that
10 at a certain point, the people from Barclays and
11 people from DTCC left that group and went through
12 and talked through that issue themselves.

13 **Q. Did you have any understanding, sir,**
14 **that Barclays was conducting due diligence into**
15 **Lehman's positions at DTC during the day on Sunday**
16 **the 21st?**

17 A. I'm not sure I understand what the
18 word "due diligence" means, but I do know that
19 Barclays were trying to understand what the Lehman
20 obligations were vis-a-vis DTCC and what, if any,
21 were the risks that they would take on if they
22 stepped into LBI's shoes and that those were
23 discussions that they had in my recollection with
24 people in operations like Alastair Blackwell.

25 **Q. Did you ever come to have an**

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2 **understanding of what Barclays concluded about the**
3 **risks they would take on if they stepped into**
4 **Lehman's shoes at DTCC?**

5 A. I was not part of that discussion and
6 I did not know where Barclays came out or what
7 their assessment of those risks were.

8 **Q. You didn't talk to Mr. Blackwell about**
9 **that?**

10 A. I don't recall having a conversation
11 with Mr. Blackwell about that. I do -- but I
12 don't believe that Mr. Blackwell would have been
13 aware of what Barclays' assessment of those risks
14 would have been. He would have explained the
15 risks as he understood them and it was up to
16 Barclays to make an assessment of those risks
17 themselves.

18 **Q. Do you know who at Barclays was**
19 **involved in assessing the risks of stepping into**
20 **Lehman's positions in DTC?**

21 A. Again, I wasn't party to those
22 discussions, but of the people at Barclays that
23 were involved, my recollection is that it included
24 Rich Ricci, Gerard Larocca, probably Jonathan
25 Hughes. There may be others at Barclays that were

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2 involved in those discussions.

3 **Q. Did you ever hear, sir, that Barclays**
4 **had decided not to take Lehman's positions at DTC**
5 **because there were concerns about the liabilities**
6 **associated with those positions?**

7 MR. HUME: Objection, lacks
8 foundation.

9 A. Yeah, I have no recollection of how
10 that got resolved.

11 **Q. Just a couple of questions on C3, sir.**
12 **Did you understand that the transfer of any assets**
13 **from Lehman's 15c3 reserve was conditional upon an**
14 **approval of the SEC?**

15 MR. HUME: Objection, calls for legal
16 speculation -- legal conclusion.

17 A. Again, I -- what I was aware of was
18 that the resolution of the 15c3 excess was
19 uncertain because it was a formula and nobody
20 would know precisely how much excess there was
21 when the customer positions were fully unwound.
22 So there was uncertainty about what that was going
23 to -- what that number was going to eventually
24 become.

25 **Q. Was it your understanding, sir, that**

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2 **the resolution of the 15c3 excess was that any**
3 **transfer of 15c3 excess would be conditional upon**
4 **the existence of an excess?**

5 MR. HUME: Objection, lacks
6 foundation, calls for a legal conclusion.

7 A. I don't know what actually made it
8 into the contract with regard to 15c3. What I was
9 involved with, as I have spoken about today, is
10 the efforts to identify what our best estimate of
11 what that excess was and to make that available to
12 those who are involved in negotiating to determine
13 how they were going to treat that and I don't know
14 how it was treated specifically in the final
15 resolution between Barclays and Lehman.

16 **Q. Did you understand, sir, that there**
17 **were certain difficulties negotiated with**
18 **calculating the 15c3 requirement over the weekend**
19 **of the 21st and 22nd of September?**

20 A. I was aware that the data that the
21 people needed to -- the data were -- there were a
22 lot of data issues associated with running the 15C
23 lock-up that weekend.

24 **Q. Did you or anybody who reported to you**
25 **come to the conclusion as to the existence or**

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2 **otherwise of an excess in the 15c3 reserve over**
3 **the weekend of the 21st and the 20th of September?**

4 A. Well, again, I -- we didn't -- my
5 recollection was that the estimates of the 15c3
6 excess that had been generated earlier in the week
7 were believed to be accurate reflections and that
8 those were computed without all the dirty data
9 that was associated with all the collateral
10 movements and other issues in LBI, and so the
11 excess that had been estimated earlier was a good
12 reflection of what the excess was likely to be.
13 Because there wasn't a lot of customer activity
14 that had taken place subsequent to when those
15 earlier calculations were made.

16 **Q. What do you mean by "dirty data"?**

17 A. Well, there was a fair amount of chaos
18 in the marketplace towards the end of that week.
19 There was a lot of fails. There was items that
20 weren't being posted accurately and those were all
21 elements that made the computation of 15c3
22 difficult that weekend.

23 **Q. Did you ever come to have an**
24 **understanding, Mr. Lowitt, that there was a change**
25 **in the deal between Lehman and Barclays and that**

1 LOWITT - HIGHLY CONFIDENTIAL
2 **change was that no cash was to be transferred from**
3 **Lehman to Barclays?**

4 A. Again, I was not part of the
5 negotiating teams and I wasn't aware of what was
6 agreed to between the two parties. So I would
7 have no view on whether that was agreed to or not
8 agreed to.

9 **Q. Nobody ever told you that?**

10 A. No, I don't recall.

11 **Q. Even subsequent to the transaction,**
12 **did anyone ever discuss the inclusion or otherwise**
13 **of cash in the deal between Lehman and Barclays?**

14 MR. HUME: Obviously excluding any
15 conversations with counsel for Barclays or
16 your own counsel.

17 **Q. I offer the same caveat as Mr. Gaffey,**
18 **I am not looking for --**

19 A. I have no recollection of anybody
20 indicating that the transfer of cash was not --
21 was excluded from the deal in any way. It was
22 just no discussion one way or the other with me
23 that I recall.

24 MR. OXFORD: Can I mark this as my
25 last one.

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2 (Exhibit 230, e-mail dated 9/22/2008
3 at 11:53:18 a.m. marked for identification,
4 as of this date.)

5 **Q. This, I promise, Mr. Lowitt is my last**
6 **exhibit which I have marked as Exhibit 230. It is**
7 **an e-mail from you to Mr. Tonucci at 11:53 a.m.**
8 **Greenwich Mean Time so 7:53 Eastern on the 22nd.**
9 **And below, Mr. Tonucci writes to you and**
10 **Mr. McDade on the subject of closing call saying,**
11 **"Cash should go in the next five minutes.**
12 **Congratulations! Paolo." And you reply, "What a**
13 **relief!! Ian." Do you see that?**

14 A. I do.

15 **Q. Do you have any understanding of what**
16 **Mr. Tonucci meant by his reference to cash going**
17 **in the next five minutes?**

18 A. I don't have a specific recollection.
19 Again, if I was speculating, it would be the cash
20 from Barclays to Lehman to effect the transaction
21 would move and that that was establishing that the
22 transaction was actually closing. And my response
23 is it is actually done. Because I think we knew
24 that it needed to happen before 8 o'clock when the
25 markets opened.

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2 **Q. You made it by 7 minutes.**

3 A. It was a stressful time.

4 **Q. I'm sure it was.**

5 MR. OXFORD: I have no further
6 questions for you at this time. Thank you,
7 sir.

8 THE WITNESS: Thank you very much.

9 MR. GAFFEY: Just one or two to follow
10 up, I promise.

11 EXAMINATION BY

12 BY MR. GAFFEY:

13 **Q. Mr. Lowitt, in response to --**

14 **Ms. Taggart asked you a series of questions about**
15 **the logic behind the discount behind the idea of a**
16 **discount applying to a large transaction by a**
17 **firm. You said, and I think I have the words**
18 **here, I am if I am a little off forgive me, if**
19 **anyone had spoke to Bart or Kirk, they would agree**
20 **it made sense, but I don't recall a specific**
21 **conversation. And that was in the context of**
22 **talking about these bulk prices.**

23 **Do you know who on the Lehman side of**
24 **the table decided that the point was negotiable**
25 **at all? Who decided that it was negotiable**

1 **LOWITT - HIGHLY CONFIDENTIAL**
2 **whether Lehman would take less than the marks**
3 **shown on its books for its securities?**

4 A. I don't. It is a question for you to
5 ask those people who were involved in the
6 negotiations.

7 **Q. The reason I ask you, you made a**
8 **reference to Bart or Kirk. I assume Bart is Bart**
9 **McDade and Kirk is Alex Kirk?**

10 A. Yes.

11 **Q. Is there a reason Alex Kirk is a**
12 **person who might have some information on that?**

13 A. Well, Alex was running our principal
14 business and was involved in the -- was close to
15 Bart and was engaged in the negotiation as best I
16 understood it. So that was the reason I included
17 those two names and they would both be very
18 knowledgeable about capital markets and how one
19 disposes of big blocks of assets.

20 **Q. And my question as to who made the**
21 **decision as to whether it was appropriate to**
22 **negotiate at all was a very broad one. It doesn't**
23 **go to the process that you spoke about before of**
24 **determining what it was. Who made the**
25 **determination, all right, we will talk to Barclays**

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2 **about selling assets for less than we carry them**
3 **on our books and you don't know who it was who**
4 **made that decision?**

5 A. I'm not aware of who would have made
6 that decision.

7 **Q. OK, and Mr. Oxford asked you a**
8 **question about the conversion which is a topic**
9 **that I had raised with you earlier and**
10 **unfortunately for you, it reminded me of a**
11 **document that I promise you I won't be very long**
12 **with it.**

13 **(Exhibit 231, document Bates stamped**
14 **10254271 (two pages) marked for**
15 **identification, as of this date.)**

16 **Q. Take a look at the document,**
17 **Mr. Lowitt, sufficiently to determine if you**
18 **remember seeing it before.**

19 A. Yeah, I have read it.

20 **Q. Have you seen the document before**
21 **today?**

22 A. I don't recall seeing it before.

23 **Q. I would direct your attention to**
24 **the -- again, the top two lines which we are**
25 **disregarding, "administrator" and "sent," below**

1 **LOWITT - HIGHLY CONFIDENTIAL**
2 **that, the latest e-mail in the chain is from you**
3 **to Alastair Blackwell, Robert Azerad entitled,**
4 **"The Conversion," where you say, "Need people to**
5 **work all night on it. Need to know we can get**
6 **BarCap their money by Sunday night. We had a list**
7 **we showed them. Can we not give them that**
8 **collateral. Robert produced it. Ian." Would you**
9 **take a look there?**

10 A. Yeah.

11 **Q. And then if you go to the very bottom,**
12 **the very last e-mail, and that is from a Nancy**
13 **Reyda to the ITD war room on the previous evening,**
14 **Friday, September 19, at about 8:08 p.m.**

15 A. I do see that.

16 **Q. And she writes to the war room, "As**
17 **you all probably know by now, the asset move was**
18 **orchestrated in such a way that the conversion**
19 **move was not needed this weekend. We will regroup**
20 **on Monday to discuss these next steps." Do you**
21 **see that?**

22 A. I do.

23 **Q. Having seen the two ends of this**
24 **e-mail conversation where Nancy Reyda is telling**
25 **the war room that the asset transfer was**

1 **LOWITT - HIGHLY CONFIDENTIAL**
2 **the reserve formula. The reserve formula would**
3 **be referring to the 15c3 lock-up and then my**
4 **mail is really referring to that income**
5 **collateral. So it seems to be a combination of**
6 **a number of different things in this chain.**

7 **Q. And in the middle of that sequence is**
8 **an e-mail from Alastair Blackwell to you and**
9 **Gerard Larocca, September 27, 10 p.m., asking,**
10 **"FYI, what do you want us to do here, use Thursday**
11 **night or can it wait until tomorrow?"**

12 **Do you understand what is meant by use**
13 **Thursday night?**

14 A. Again, I'm basing that on what goes
15 below that. But usually 15c3 lock-up calculation
16 that was calculated on the Thursday night.

17 **Q. OK.**

18 A. Rather than having to rerun it and
19 then to the questions that we had a little while
20 ago about the need to rerun the 15c3 over the
21 weekend, that was -- that was work that needed to
22 get done in order to run that 15c3.

23 MR. GAFFEY: Thanks, I have nothing
24 else.

25 MR. HUME: I have I am sorry, to do

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2 **orchestrated in such a way that we can go home,**
3 **and you say no, everybody needs to work all night,**
4 **does that refresh your recollection as to what the**
5 **conversion was?**

6 A. I think the conversion here is
7 different than the conversion that I have been
8 talking about. So the conversion that I was
9 referring to, without the benefit of this was just
10 the movement of assets from the JP Morgan to BoNY
11 to effect the repo.

12 Again, I don't have a recollection of
13 this, but what I think Nancy is sharing with
14 people is that there is no requirement to move
15 the assets in the way that was envisaged in the
16 original transaction, which was moving large
17 amount of specific assets and at specific
18 prices to Barclays in one way or another. And
19 then the -- my mail at the top, again, I am
20 doing this by just reading through this -- is
21 saying that the reserve formula requires recs.
22 R-E-C-S to be run and processed,
23 reconciliations, and that what I am saying in
24 this is that we actually need to, we need to
25 work on those reconciliations so we can update

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2 **this. I have two things to quickly clean**
3 **up.**

4 **EXAMINATION BY**
5 **MR. HUME:**

6 **Q. Mr. Lowitt, if you look at Exhibit 229**
7 **that Mr. Oxford showed you. Do you have Exhibit**
8 **229 in front of you?**

9 A. I do.

10 **Q. If you look at the spreadsheet**
11 **attached or schedule attached, Mr. Oxford asks you**
12 **first whether you saw the unencumbered collateral**
13 **that has been talked about today of approximately**
14 **1.9 billion or 2 billion on this schedule. Do you**
15 **remember him asking you that?**

16 A. I do.

17 **Q. I think you may have said that you did**
18 **not see it on there. And I just wanted to ask**
19 **you, you see that there is a cash number of 7**
20 **billion represented. Do you see that?**

21 A. I do.

22 **Q. And then you see there is an inventory**
23 **of a variety of classes of securities. Do you see**
24 **that?**

25 A. I do.

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Q. And that inventory totaled 44.8 billion. Do you see that?

A. I do.

Q. Which if you add the inventory and the cash, you get to 51.8 billion. Do you see that?

A. I do.

Q. And do you recall saying earlier that your general recollection was that the repo collateral had a value at least from Chase of about 49.7, I think, or 49.9 billion, something like that. Do you recall that?

A. I do.

Q. Is it possible -- first let me ask you, do you know -- did you prepare this schedule?

A. I did not prepare this schedule.

Q. Do you know that the unencumbered assets, the approximately 1.9 billion or 2 billion is not included within the inventory?

A. I don't know that and as you show what the sum of the numbers are, at close to 52 billion dollars, it is quite plausible that the 1.9 billion dollars of unencumbered collateral is included in inventory for the purpose of this, but again, I didn't prepare it and I don't know with

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certainty if it is.

Q. Mr. Oxford also asked you if you saw -- and here I just don't know whether the question was clear. He asked you if you saw the 5 billion of exchange-listed options which he took as a phrase from another exhibit, Exhibit 219. Do you remember him asking you that?

A. I do remember him asking me that.

Q. And you said you did not see that on this schedule, Exhibit 229. Do you recall giving that answer?

A. I do recall giving that answer.

Q. Now, do you see a listing of 5 billion on the schedule? Let me ask the question this way: Was your answer that you did not see the 5 billion for exchange-listed options or that you do not believe it is possible that exchange-traded derivatives of any kind are listed on this schedule?

MS. TAGGART: Object to form.

A. I mean, I see under inventory a number that says "derivatives and other contracts."

Again, I didn't create this schedule and I probably didn't spend enough time

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reviewing it. I was saying I didn't see a line that referred explicitly to exchange-traded options and I didn't see a 5 billion dollar number.

Again, I don't know how the schedule was created and it is possible that it includes an estimate for what the exchange-traded options are. I can't say one way or the other.

MR. HUME: I have no further questions.

I do want it state for the record that Exhibit 217, I have been informed -- and we can address this off line -- I just want to state it on line, from our production people, it is not an integrated document. All these sheets marked together as Exhibit 217 are not a single document but multiple documents. We will have to address it off the record.

MR. GAFFEY: Sounds like a vendor issue.

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EXAMINATION BY
MR. OXFORD:

Q. I have one question based on Mr. Hume's question. You just said with respect to Exhibit 229 that it was possible that the spreadsheet attached to the e-mail included a line item for derivatives, is that correct?

A. Again, I see under "inventory derivatives and other contracts."

Q. What's the value of that entry, sir?

A. It looks like 80.

Q. And when you say 80, do you mean 80 million dollars, sir?

A. It doesn't say what the unit is, but given the other numbers, it seems that it would be 80 million.

Q. Well, you managed to answer my question about a thousand for C3 lock-up release meant 1 billion dollars, right?

A. Right.

Q. And you managed to answer Mr. Hume's question that figure of 7000 for cash is 7 billion?

A. Yes.

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Q. So it is fair to assume that the figure of 80 against the line items of derivatives and other contracts is 80 million dollars, correct?

MR. BERNSTEIN: Asked and answered.

A. Yes, I did say it was 80 million dollars.

Q. Do you see anywhere on Exhibit 229 an entry that reflects, separate and apart from the "derivatives and other contracts" line any entry for margin or deposits at the UCC or any other exchange?

MR. HUME: Objection, the document speaks for itself.

A. Again, I didn't develop the schedule. I don't know precisely what makes it into the different lines. The words "margin" or -- and "OCC," I don't see on the schedule.

Q. And do you see any other entry under the subheading of inventory in which margin or deposits at OCC or elsewhere would naturally fit?

A. I didn't generate the schedule so I don't know where somebody might have done that, but the inventory categories of governments and

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equities and mortgages and corporate debt, commercial paper and derivatives and other, you would imagine it would be in the derivatives line
(Continued on next page for jurat)

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if it was anywhere.

MR. OXFORD: OK. Thank you, no further questions.

MR. BERNSTEIN: Both Mr. Lowitt and Mr. Kelly reserve the right to read the deposition and provide errata. Depositions, and provide errata.

(Time noted: 5:51 p.m.)

IAN LOWITT

Subscribed and sworn to
before me this day
of August, 2009.

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INDEX:

WITNESS	EXAM BY:	PAGE:
I. Lowitt	Mr. Gaffey	6, 276
	Ms. Taggart	216
	Mr. Oxford	248, 285
	Mr. Hume	281

EXHIBITS

Exhibit No.	Marked	
Exhibit 216 document Bates stamped	30	
BCI-EX77335 through 37		
Exhibit 217 document Bates stamped	97	
BCI-EX00115595 through 654		
Exhibit 218 document Bates stamped	42628	146
Exhibit 219 document Bates stamped	138017	148
Exhibit 221 document Bates stamped	137537	154
Exhibit 220 document Bates stamped	161	
10298186		
Exhibit 222 e-mail dated 9/20/2008 at	173	
1:42:32		
Exhibit 223 document Bates stamped	181	
10293506		
Exhibit 224 four-page e-mail dated	184	
9/20/2008 at 6:12 p.m.		
Exhibit 225 two-page document Bates	189	
stamped 77882		
Exhibit 226 e-mail dated September 21,	199	
2008 at 2:15 p.m.		
Exhibit 227 two-page document Bates numbered	203	
70327		
Exhibit 228 e-mail dated 9/21/2008 at	257	
8:09:34 p.m.		
Exhibit 229 e-mail dated 9/21/2008 at	260	
6:20:35 p.m.		
Exhibit 230 e-mail dated 9/22/2008 at	274	
11:53:18 a.m.		
Exhibit 231 document Bates stamped	277	
10254271 (two pages)		

LOWITT - HIGHLY CONFIDENTIAL

CERTIFICATE

STATE OF NEW YORK)

)ss:

COUNTY OF NEW YORK)

I, MARY F. BOWMAN, a Registered Professional Reporter, Certified Realtime Reporter, and Notary Public within and for the State of New York, do hereby certify:

That IAN LOWITT, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

In witness whereof, I have hereunto set my hand this 20th day of August, 2009.

MARY F. BOWMAN, RPR, CRR

LOWITT - HIGHLY CONFIDENTIAL

ERRATA SHEET

NAME OF CASE: In Re: Lehman Brothers, Inc.

DATE OF DEPOSITION: 8/20/09

NAME OF WITNESS: Ian Lowitt

Reason codes:

1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

Page ____ Line ____ Reason____

From _____ to _____

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From _____ to _____

Page ____ Line ____ Reason____

From _____ to _____

Page ____ Line ____ Reason____

From _____ to _____

Page ____ Line ____ Reason____

From _____ to _____

IAN LOWITT

A				
ability (9) 70:25 95:13 97:5 121:2 143:12 176:23 182:24 183:4 209:12	acquisition (5) 12:17 16:4 78:25 80:4 245:7	136:6 159:16 182:15 284:14,19	43:13	132:8
able (8) 67:25 125:7 139:16 232:18 241:10 243:3 244:22 253:22	acted (2) 10:21 11:4	addressed (5) 66:23 67:18 106:18 136:4 194:19	agreed (34) 5:5,9,15 45:6,8 51:2 72:12 73:13,18,25 75:7 92:13 111:18 115:5 162:11 175:14 183:3,24 214:2,15 216:6 228:12,14 233:12 239:24 240:25 249:5 250:24 252:13 264:21,22 273:6,7,8	allocation (1) 137:7
absent (1) 135:6	action (1) 290:17	adequately (1) 78:17	adjust (3) 28:6 87:18,20	allowed (2) 119:4 212:2
absolutely (2) 124:4,5	activities (10) 13:7 23:7,20 24:15 25:23 40:5 52:24 56:13 158:7 175:3	adjusted (5) 228:7 229:9,20 230:11 234:8	adjustment (5) 87:21,22 88:25 90:25 204:4	all-nighter (1) 103:7
absorb (1) 95:13	activity (11) 36:12 52:13 65:18 67:24 183:14 210:22,25 219:22 229:14 256:10 272:13	administer (1) 5:18	agreeing (1) 42:17	all-nighters (1) 103:9
accept (1) 156:21	actual (4) 68:12 185:24 212:25 234:5	Administered (1) 1:8	agreement (60) 15:9 18:25 19:22 22:6 31:5,8,12,18,19 33:10 38:6,25 44:2 44:7 45:12 50:16 51:19 52:18 53:2,5 53:7 55:3 56:2 71:8 71:9 90:9 110:2,21 111:6,7,17 112:2,8 112:10 123:15 133:3,5 156:6 196:21,24 197:25 197:25 198:5 203:25 204:12 205:3,6,8 213:23 218:19,24 224:7,13 224:20 227:15 228:12 241:25 245:17,19,23	alternative (1) 145:8
accepted (5) 32:12 117:23 160:22 177:7 225:2	add (6) 71:15 89:20 165:19 183:18 188:19 282:5	administrative (3) 10:21,23 11:4	agreements (2) 198:17 205:11	Alvarez (1) 4:25
accepting (1) 227:12	added (1) 126:4	administrator (1) 277:25	agriculture (1) 226:5	amateur (1) 78:10
access (2) 199:7,19	adding (2) 78:11 128:9	advantage (1) 167:14	ahead (7) 27:11 52:7 99:22 126:20 233:23 240:14 246:21	ambiguous (20) 23:10 30:18 42:20 47:8,12 64:4 71:14 78:7 82:5 105:12 117:14 174:9 186:16 210:12 218:9 228:6 230:3 238:21 261:25 266:16
accomplish (1) 204:3	addition (9) 14:13 21:5 24:5 46:20 53:11 54:10 192:3 192:24 193:16	advice (1) 24:12	AI (1) 115:9	amended (1) 71:10
account (2) 79:3 255:9	additional (72) 18:7 53:11 59:12 60:4 61:3,4,8,20,25 62:9 62:14,17,22 63:7,10 63:16,17 64:11,25 65:17,25 66:7,12 102:8,12,20 103:11 104:3,8 105:7,15 120:24 126:14 147:8,12 148:12 150:14,18 151:22 151:23 152:20,22 154:11 158:6 163:17 172:7,9,18 172:20 173:16 175:13,19 176:5 181:5,16 183:9,18 183:19 196:22 198:23 201:22 222:15 230:21 231:3 240:18 243:3 245:2 249:16 251:4 252:8 263:21 264:2	afraid (4) 83:17 84:6 191:5 224:25	AIG (1) 115:9	Amendment (2) 55:2 56:2
accounts (3) 170:6 195:9 199:8		Africa (2) 7:17,21	Ajay (1) 16:21	Americas (2) 8:17 200:8
accrual (13) 53:16,21 54:2,9,11 212:11,19,24 213:8 213:16,19,19 214:12		afternoon (8) 66:13 104:18,20 120:2 185:23 196:3 248:4 257:17	al (1) 1:8	amount (91) 18:11 28:14,18 31:15 31:19 34:16 42:13 42:25,25 43:3,7,8 43:20,21,24 44:11 44:11,21,21 45:10 45:13 47:23 48:13 48:16 63:5 68:7 72:10,11 73:11,13 79:15,17 81:22 82:11,12 89:8 90:6 90:11,11,13,15 91:20 96:16,17,18 96:19 97:3,4 118:3 118:5 122:16,18 137:3 143:22 144:17 148:5 152:11 162:12,24 163:6,20,22,22 164:4,19,20 165:14 166:17 177:15 188:9 189:21,24 201:3 204:8 207:18 207:20 208:11 209:17,18 210:21 211:7,9,11 214:2 224:6 231:7 232:15 237:15 265:9 272:17 279:17
accruals (1) 212:25		agencies (7) 88:22 89:4,8 226:8,9 226:12,14	allocate (1)	amounts (4)
accrued (3) 54:4 211:8,9		agency (1) 81:14		
accruing (1) 54:7		agent (3) 29:10 116:6,7		
accuracy (1) 12:4		aggregate (3) 147:16 166:4 174:12		
accurate (8) 41:14,21,24 43:15,17 48:8 196:22 272:7		ago (8) 27:18 82:14 102:6 122:20 144:16 161:25 235:23 280:20		
accurately (3) 12:3 263:10 272:20		agony (1) 14:24		
achieve (2) 89:18,25		agree (11) 19:4 31:13,14 46:15 46:17,18 63:22 135:21 255:18,20 275:19		
achieved (2) 175:21 176:4		agreeable (1)		
acquire (3) 136:7,9 235:22	address (5)			
acquired (1) 226:21				

19:17 81:16,18 162:23 analysis (2) 98:18 100:11 Angeles (1) 4:6 anniversaries (1) 18:8 anniversary (2) 19:16 32:23 annotations (4) 87:13 90:24 211:5 230:9 answer (34) 7:9 23:11 45:22 58:13 67:3 70:4,15,22 74:12 75:20 76:19 85:11,11 94:22 117:15 130:23 158:21 160:19,21 165:22 176:8 178:4 193:21 207:19 227:3 228:6 229:7 255:15 262:2 283:12,13,16 285:18,22 answered (14) 45:21 65:21 74:8 103:13 134:8 154:10 163:3 165:16 176:7 178:3 181:10 202:22 244:16 286:6 answering (1) 57:23 answers (3) 6:25 59:2 244:20 Anthony (2) 20:21,22 anticipated (1) 195:15 anticipating (1) 95:6 anxious (2) 177:11,19 anybody (16) 21:9 50:3 61:16 62:6 65:11 113:12 233:4 233:16 234:17,19 246:17 253:17 265:17 268:6 271:24 273:19 anyway (3) 183:7 184:16 193:5 apart (10) 52:4 73:9 86:19 140:3 158:5 183:13 188:7 192:6,7 286:10 apologies (2) 169:10 236:21	apologize (2) 15:2 85:13 apparent (1) 111:4 apparently (2) 171:23 201:14 APPEARANCES (2) 3:2 4:2 appears (5) 98:25 107:23 110:15 111:23 149:5 append (1) 196:24 applied (8) 26:20 27:15 29:20 132:22 169:15,19 170:12 171:22 apply (2) 27:23 135:7 applying (2) 7:8 275:16 appointed (1) 9:10 appreciation (1) 108:13 apprised (1) 22:12 approach (2) 139:11 232:25 appropriate (2) 113:21 276:21 approval (2) 174:15 270:14 approve (4) 68:16,22 69:8,10 approved (15) 46:9,13 50:10 59:3,8 66:23 67:8,11 68:15 69:11,12,16 173:18 174:5,16 approximately (11) 48:18 77:21,24 78:5 104:17 125:10 177:8 255:12 264:11 281:13 282:18 April (2) 8:20 9:18 area (2) 159:11 180:4 argumentative (2) 178:3 202:14 arises (1) 46:22 arising (1) 6:12 Aronow (6) 168:21,25 169:10,23 170:10 171:11 arose (1)	208:16 arranging (2) 25:2 30:10 arrive (1) 164:15 arrived (1) 226:16 ARS (1) 114:6 ascribed (2) 29:21 209:19 aside (7) 52:9 102:4 225:8 227:15 233:14,20 234:15 asked (40) 26:2 45:20 49:3 60:13 62:13 63:21 65:20 67:2 68:14 70:7 74:7 86:13 89:11 99:23 103:12 115:19 119:9 123:9 124:2 134:7 154:9 156:10 160:20,22 161:25 163:2 164:13 175:18 176:6 178:2 181:9 202:21 207:17 225:9 244:16 275:14 277:7 283:3 283:5 286:6 asking (26) 43:6 52:8,22 56:11 67:7 69:15 70:21 72:2,14 92:8 112:4 113:12 114:3 128:13 155:19 175:23 192:15,18 194:9 202:16 215:25 251:20 280:9 281:15 283:8 283:9 asks (1) 281:11 aspects (1) 212:16 assert (5) 57:22 58:4,4,5,7 assess (3) 97:7 113:20 170:8 assessed (1) 227:11 assessing (2) 170:7 269:19 assessment (5) 114:17 162:5 269:7 269:13,16 asset (32) 37:5,10 51:19 53:12 55:3 56:2 81:9,11	81:13,17,19,20,22 81:23 82:7 87:6,25 88:22 112:8 132:17 163:5,7 164:5 185:15 208:8,11,12 228:20 232:17 236:8 278:17,25 assets (187) 6:14 16:4 22:21 35:22 36:5 37:15,20 39:14 39:18,23 40:2,6,21 40:24 41:4,6,6,9,17 42:12,18,22,23,25 43:20 44:15 45:25 47:15 53:13 68:6 69:4 72:10 73:12 80:14 81:23 82:10 87:22 88:14 91:9,25 92:3,11,25 93:19 94:3,10 95:7,11 96:17,18 97:5 105:9 105:21 109:21,23 110:6,7 112:15,21 112:23,24,25 113:3 113:4,9,13,14,17 114:5,12,19,20 121:11,14 126:4 127:14 128:19 129:7 130:15 131:18,23 132:2,9 132:12,15,18,21 134:18,20 135:10 136:6 138:4,15,19 141:2,9,10 143:21 152:20,22 162:22 163:7,8,12,23 164:4 166:3,11,11 167:20 172:19,20 175:19 176:5 181:6 185:15 200:19 201:7 205:15 206:6 214:3 220:18 226:4,5,21 227:21 228:4,8,10 228:21,24 229:3,10 229:11,14,20 230:11,16,22 231:17 232:6,8,13 233:2 234:8,21 235:8,10,16,17,20 235:22 236:3,11,15 237:13 238:2,16,24 239:15,16,20 240:2 240:10 241:9,12,17 241:19,21,24 242:7 242:10,13,16,21 251:11 260:3,5 264:10,16 270:12 276:19 277:2 279:10,15,17 282:18	asset-by-asset (8) 129:15,18 133:2 162:5 163:16,18 165:24 166:14 assistance (1) 115:10 assisting (2) 34:12 191:22 associate (1) 84:5 associated (15) 46:3 53:13 99:24 124:10 126:7 136:10 171:8 215:4 215:6 226:20 236:16 258:10 270:6 271:22 272:9 associates (1) 72:25 association (1) 237:7 assume (12) 53:8,10 104:20 111:9 153:18 170:4 190:17 224:21 225:25 228:9 276:8 286:2 assumed (7) 50:9 75:5 96:12,20 97:14 211:5 227:15 assuming (6) 80:16 111:11 185:16 213:21 220:19 260:15 assumption (6) 84:13 111:13,13,14 249:13 263:16 assuring (1) 183:10 attached (9) 98:18 99:4,8 255:3 260:19 262:20 281:11,11 285:7 attachment (1) 256:8 attachments (1) 257:20 attend (3) 56:22 57:3 115:19 attended (5) 7:16,20 49:18 50:7 103:2 attending (1) 49:21 attention (8) 91:2 105:14 123:16 136:20 171:4 248:8 256:25 277:23 attorneys (7) 3:4,11,17 4:4,10,16
---	---	---	---	---

5:6 attorney/client (1) 75:21 attributed (2) 81:16,18 Aublin (1) 113:25 auction (3) 110:23 112:16 141:16 audible (1) 6:25 August (4) 1:15 2:5 288:16 290:21 authorized (1) 5:17 available (18) 100:3 120:15 121:5 121:20 122:11,18 124:14,23 125:25 126:5 143:6 199:4 202:19 213:25 240:24 241:14,15 271:11 Avenue (2) 3:12 4:11 awards (3) 32:23 54:12 180:24 aware (51) 13:11 27:16 30:7 37:20 38:12,14 42:10 50:11,12 53:17 59:23 60:2 77:15,19 82:21 100:4 114:14 120:10 129:14 140:7 143:15 152:16 156:4 171:6 172:7,15,16 194:8 205:25 209:22 222:22 235:7 236:13 239:25 242:3,11 249:10 251:6 252:21,21,22 263:15 265:14 266:5,7 267:22 269:13 270:17 271:20 273:5 277:5 Azerad (14) 154:3 175:16 184:23 185:11,14 188:14 196:14 203:25 222:10 247:19 261:4 262:15,19 278:3 A-R-O-N-O-W (1) 168:22 a.m (21) 2:6 106:24 114:2 123:11 136:24	156:20 159:21 176:12 185:11 196:18,19 197:5,9 197:20 203:18,20 203:23 225:19 274:3,7 289:24 <hr/> B <hr/> B (3) 242:13,18 244:14 back (30) 19:6 20:13 27:3 35:9 35:11 48:2,23 72:12 73:13 91:22,24 92:9 93:4 95:15 102:5 113:10 116:4,22 118:11 126:13 154:22 161:21 170:20 197:12 215:21 240:2,11 241:17,25 242:22 backwards (1) 125:9 bad (1) 142:8 balance (23) 95:10 184:25 185:6 214:4,8,12 215:6 258:13 261:12,18 261:23 262:4,7,13 262:19,25 263:9,23 263:25 264:16 265:4,18 266:18 balances (2) 255:14 258:15 bank (4) 149:19,20 167:18 219:18 bankruptcy (29) 1:2 12:23 13:6,21 15:8,18 20:6 22:3 24:18 34:2,6 56:23 57:3 66:14 99:25 104:15 145:10,20 145:21,24 146:4 155:20 156:7 173:25 174:5,12 180:22 196:2 232:11 BarCap (18) 128:9,15,18 131:15 155:22 156:22 160:24 162:3 193:9 200:7 201:5 204:13 206:16 207:4 209:6 227:11 258:14 278:6 Barclays (397) 3:11 6:14 8:16,22,23 9:7,9,14,15,19,22	11:13 12:16,17 13:2 13:17,20,23 15:7,13 15:17,24 16:2,14,16 17:7,9,15,16 19:22 19:24 20:13 21:8 22:22 25:2,4,12,18 25:20 26:3,15,22,23 27:4,5,6,14 30:11 31:6,9,12,14,18,19 31:23 32:13,19,22 33:11,18,18,19,20 34:19,21 35:2,14,20 36:3,21 37:2,5,8,14 37:22,25 38:7 39:23 40:12,21,24 42:11 42:17,21 44:12,14 44:18 46:22,24 47:2 47:10,13,15 48:5,9 50:16 51:21 52:18 53:7,10,18 55:10 58:7 60:12 64:23,24 65:4,9 66:6 68:17 71:10 72:11 73:6,10 73:13 75:7,15,15,18 76:6,12,22 77:18 78:13,22,24 79:2,4 80:3,16 81:23 82:8 84:20 88:14 89:3 90:3,5,11 91:9,23 91:25 92:4,15,24 93:19,24 94:5,9,13 94:16,18,25 95:3,9 96:13,16,24 97:4,9 97:18,21 98:12,25 99:15 100:3 102:16 105:9,17,22 109:13 110:3 112:14,21,22 112:25 113:3,13 114:12,16,17 115:4 115:17,17,20 116:7 116:12,12,21,24 117:8,19,22 118:16 119:2,15 120:24 121:4,7,16 122:12 123:10 124:7 125:7 126:5 127:8,13 129:7,22 130:8,16 131:6,22 132:13 134:18 135:12,19 136:7 137:22,25 138:15,19,20,21 139:17 140:25 141:6,8,12 152:13 157:18 159:3,8 162:11,24 163:6,14 163:21 164:5,20 165:11 166:18,23 167:17 169:11,15 169:25 170:5,10 171:5,6 172:13	173:16 174:14,20 177:9 178:21 179:6 179:11,17,18,21,23 180:5 181:8,18 182:25 183:5,11,15 185:2,6,18,23 186:6 191:4,15,22,23 192:4,16,22 193:14 193:19,25 195:7,19 198:5 205:3,10,24 205:24 206:3,7 208:10,17,21 209:3 209:7,8,17,24 210:19 213:11,20 217:14 218:6,16,24 219:3,6,9,12,15,17 219:18 220:7,16 221:7 223:8,11,14 223:19 224:8,19 225:23 226:22,25 227:8,15 228:12,21 231:18 232:21,25 233:4,17,21 234:8 235:7,14,15,19 239:17,22 240:2,8 240:11,25 241:6,13 242:2,19 243:22 245:5,7 249:4 250:21 251:5 252:20 253:19 259:9,14 260:4 261:4,5,6,18,23 262:5,8,9 263:11,24 267:7,15,20,23 268:8,10,14,19 269:2,6,13,16,18,22 269:25 270:3 271:15 272:25 273:3,13,15 274:20 276:25 279:18 Bart (44) 14:2 15:16 16:2,10,11 16:24 24:4,6 60:14 61:20,23,24 62:5 67:2,3,5,7 68:14 104:9,12,14,19 105:5 123:9,22 124:2,6 148:13 150:23 155:6,19 160:2 161:5 196:18 197:5,8 211:24 233:10 247:20 275:19 276:8,8,8,15 based (21) 41:19 68:6 84:13 113:4,13 123:2 148:9 197:21 199:12 214:9 227:7 231:23 232:2,4 233:5 234:14	235:11,24 238:14 239:3 285:4 basic (1) 137:22 basically (1) 151:2 basing (3) 247:9,10 280:14 basis (17) 96:2,5 97:6 111:12 113:16 119:5 126:12,15 136:8 139:24 163:16 209:8,11,14 231:22 235:15 238:8 Bates (23) 30:22 97:24 98:5 99:14 146:10 148:21 154:25 161:16 181:22 189:25 203:8 260:17 277:13 289:11,12,13,13,14 289:14,16,18,20,24 Battery (1) 4:17 BCI-EX00115595 (3) 97:25 98:6 289:12 BCI-EX77335 (2) 30:23 289:11 bearing (2) 98:5 101:4 beg (1) 124:4 began (5) 10:5 12:23 17:13,14 23:2 beginning (1) 15:25 begins (2) 164:10 190:9 behalf (4) 29:13 75:19 149:21 149:22 Beldner (3) 142:7 184:24 188:15 belief (2) 238:9,14 believe (52) 9:2 10:3 12:22,25 15:16 20:20 23:3 32:8 41:11 43:18 53:3 54:24 56:18,19 61:16,22 62:3 66:19 78:8 81:5 84:9 100:2 101:11 102:24 103:5,20 109:22 112:9 129:25 130:10 139:21 160:8
--	--	--	---	--

165:23 167:10 175:17 178:18 181:13 187:4,6 194:14 197:21 219:12 228:22 230:8 233:11 237:24 246:12 248:13 262:6 264:11 269:12 283:18 believed (6) 34:21 152:10 209:24 235:24 241:20 272:7 believes (1) 239:5 believing (1) 129:20 benefit (1) 279:9 benefits (1) 177:21 Berkenfeld (16) 24:11 57:7,12,15,18 58:8,16 156:19 173:12 175:12 215:16 216:5,5 246:12 247:5,22 Bernard (1) 114:2 BERNSTEIN (90) 3:20 18:14 19:10 23:9 27:7,11 30:17 31:21 45:20 47:11 56:17 57:14,21 58:3 65:20 69:20,25 70:6,15,22 71:15 72:2,14,19,23 73:4 74:7 76:9,19 78:14 82:4 83:22 85:10 90:19 94:20 96:4 98:19 99:13 101:23 103:12 105:11,18,23 106:5 108:21 112:4 126:18 130:21 131:8 132:23 134:7 134:25 138:9 140:15,18 146:5 154:9,19,23 158:10 161:13 163:2 164:7 168:8,13 174:6 175:25 176:6 178:2 181:9 193:21 197:11 202:21 207:16 213:3 218:8 224:23 228:5 229:5 233:19,23 236:17 236:21 238:20 240:13 244:15 260:14 261:24	286:6 288:5 best (24) 16:20 17:4,22 21:3 60:3 62:8 96:11 115:3 135:18,22 137:5,16 142:14 170:18 202:10 220:2 240:4,21 244:23 250:14 252:18 263:9 271:10 276:15 better (4) 81:8 159:15 201:25 231:14 beyond (4) 17:5 53:16,21 150:14 bid (5) 42:14 43:9 46:2 234:22 237:7 bid/offer (4) 236:15,19,20 239:2 big (10) 41:3,5 45:24 115:11 127:4 153:10 236:15,19,20 276:19 bigger (1) 185:24 billion (151) 45:17,18 47:17 48:18 53:15,19,21 54:2,14 60:6 62:20,22 63:6 63:10,16 64:11 65:25 66:11 72:9 73:11 77:22,25 78:5 78:9,13 81:25 82:9 82:9,13 95:22,22,25 96:7 97:13,20 109:21 114:6 116:14,21 125:10 125:10,14 138:20 138:20,22,22,25 139:2 142:10,19 143:8 147:4 148:4,7 149:10,11,12 150:5 150:13,14,20 151:6 151:9,12,16 152:2,9 165:9,12 182:13 185:19,19,23 186:13,14,18,20,22 186:24 187:2,8,23 188:3,3,10,12 189:12,17 190:13 191:4,11,15,22 192:16,19,23 193:3 193:15,17,19,22,25 194:11 196:15 200:20 204:10 211:12 212:3,11 213:8,10,15,23	214:3,5 216:7 224:13,16 226:13 241:22 248:10,21 248:23 252:24 253:4 255:12 264:6 264:11,13,14,16,24 265:20,25,25 281:14,14,20 282:3 282:6,11,18,18,21 282:23 283:6,14,17 284:4 285:20,24 billion-42 (1) 185:19 bit (7) 33:6 51:7 67:14 161:24 206:2 208:15 235:23 BlackRock (5) 237:2,6,11,12,16 Blackwell (24) 14:18 63:14 66:10 168:24 180:16 182:8,11 184:24 185:11 188:15 190:13 191:3,9 192:14 193:6 196:13 203:25 220:3 268:24 269:8 269:11,12 278:3 280:8 blinked (1) 216:6 block (14) 4:9 42:12,23 43:20 45:24 132:7 137:3,7 144:17 232:6,8 234:21 236:3 238:15 blocks (6) 41:3,5 236:7,14 238:2 276:19 blood (1) 290:18 board (6) 49:21 50:3,5,8,10,14 boards (1) 49:18 Bob (2) 6:9 14:18 body (5) 121:20 122:4 126:4 210:7,8 Boies (2) 3:10 73:2 bonds (3) 28:20,24,25 bonus (7) 54:10,11,15 213:12 213:17,20,24 bonuses (2)	32:19 263:17 BoNY (17) 116:6 167:18,22,23 170:6,8 171:9,17,19 175:9 190:18,23 219:21,23 220:12 267:6 279:10 BoNY's (1) 190:24 book (3) 88:17 143:20 165:15 booked (2) 171:19 190:24 books (47) 12:2,4 29:22 41:8,14 41:18,20,23 42:13 43:2,4,8,17,22,24 44:11,22 45:11,13 72:11 73:12 81:20 82:12 90:4,7,11,13 91:13 92:25 94:3 96:19 97:3 127:17 128:21 137:8 138:8 145:5,19 162:12,24 163:24 164:19 166:17 208:11 235:3 276:3 277:3 bore (1) 212:25 bottom (7) 6:16 44:14 91:3 136:22 141:15 142:6 278:11 bottoms (2) 89:23 164:24 bottoms-up (2) 45:4 89:13 bottom-up (1) 44:23 bought (1) 138:21 bound (1) 18:24 Bowman (4) 1:18 2:12 290:7,23 box (17) 156:22 157:6,9,23 160:23 174:3,20 182:10 185:22,24 186:9 194:23 195:10,13,16,19,21 break (15) 7:5,11 51:12 58:25 90:23 119:17 120:23 154:21 161:14 183:25 207:6,8 208:16 239:10 257:8 Brett (1) 184:24	Bridget (2) 3:8 14:16 briefly (2) 6:9 266:9 brings (1) 126:13 broad (8) 58:19 114:23 163:5 164:16 243:11 244:8,10 276:22 broaden (1) 75:12 broadly (3) 164:18 234:23 244:20 broker (3) 137:9 144:21,25 broker-dealer (2) 145:2,10 Brothers (22) 1:7 3:4 4:24 6:11 10:10 14:3 30:20,21 32:3 33:4,14,16 49:19,19 51:20,20 101:19 115:18 116:9 149:22 177:14 291:3 building (2) 177:16 224:5 buildup (1) 163:18 built (3) 169:19 192:9,11 bulk (3) 94:4,10 275:22 business (27) 10:24 39:22 42:2 77:11,11,17 94:19 111:17 123:14 131:14 137:7 151:21 228:21 248:15,20 249:2,4,7 249:12 250:9 251:2 251:6 259:13 263:11,14 266:6 276:14 businesses (8) 9:11,15 16:5,6 77:12 92:23 94:17 95:5 busy (1) 178:17 buy (4) 42:17 116:14 128:22 131:24 buyer (1) 238:25 buying (5) 16:5 41:3 45:24 137:25 234:21 BYMAN (3) 4:13 7:18 14:20
--	---	---	---	--

C				
CA (1)	27:8,21 28:2,18,22	cetera (2)	Chicago (1)	24:16,18 59:13
4:6	28:25 32:23 47:23	72:25 81:14	4:12	102:14 110:6
calculated (7)	48:2,10,13,17 53:24	CFO (4)	chief (6)	126:21 136:7
45:19 68:11 96:3,6	77:18 116:14,16	13:24 41:22 254:23	8:16 10:21,23 11:4,18	Clement (1)
188:23,24 280:16	117:20,25 118:3,5	259:3	11:20	114:2
calculating (1)	118:11,11,17	chain (23)	chose (3)	clerical (1)
271:18	138:24 139:3	106:20 107:23 110:19	113:8 114:21 140:25	99:11
calculation (1)	143:23 149:22	111:2 112:11	Chris (3)	close (9)
280:15	185:20 186:21,24	113:24 127:21	120:13 123:7 260:7	67:13 152:15 176:13
calculations (4)	187:2 188:4,19,24	131:11 155:11	chronologically (1)	177:7 178:15
89:16,17 189:11	192:23,24 204:5,7	168:20 173:6 182:6	196:12	212:12 216:18
272:15	213:12,17,20,24	184:18,21 190:9	circumstance (2)	276:14 282:21
call (6)	224:6,14,16 234:4	196:6,9 203:17	203:5 232:5	closed (12)
61:8 159:20 160:3	238:19 239:7,8	205:13 257:25	circumstances (3)	8:24 21:15 33:21
168:10 200:15	255:10,13 273:2,13	262:17 278:2 280:6	55:21 66:4 181:21	55:14 74:19 75:14
274:10	273:20 274:11,16	chance (4)	Citadel (4)	79:24 158:9 161:3
called (8)	274:19 281:19	168:15 254:10 257:21	217:20,25 218:5,11	179:19,22 222:25
6:3 19:15 28:9 55:5	282:6 285:23	260:25	Citi (1)	closely (1)
150:7,11 160:3	categories (5)	change (5)	149:18	156:25
202:13	81:24 163:6,7 226:4	210:17 216:21 249:8	city (1)	closing (23)
calls (8)	286:25	272:24 273:2	149:9	18:9 21:16 22:4 31:25
68:25 71:14 75:17	category (5)	changed (10)	claim (2)	33:2 55:13,18,22
117:14 170:22	132:17 164:6 165:18	46:6 66:3 71:10 74:15	116:15 182:15	102:11,14 178:22
224:23 270:15	166:5 226:7	74:17 130:3,5	claims (3)	178:24 215:19,23
271:6	cause (1)	166:11,12 246:25	67:17 182:15,18	216:17 217:12
cancel (3)	153:24	changes (3)	clarification (8)	218:2 221:11
47:25 193:2 216:6	caused (1)	56:6,10 245:12	55:5,9,12,15,19,22	243:19 247:14
canceled (1)	115:5	changing (1)	82:20 207:22	253:16 274:10,22
28:23	caveat (1)	245:15	clarifications (1)	CLS (3)
canceled (1)	273:17	chaos (1)	50:20	149:8,17,19
25:10	cc (2)	272:17	clarify (4)	codes (1)
canceled (1)	112:13 113:25	Chapter (1)	158:10 200:25 207:14	291:6
77:7	ccs (1)	1:6	291:7	coincidence (1)
CAO (4)	184:24	character (1)	clarifying (1)	229:24
11:8,9 14:15 200:7	certain (16)	126:3	65:8	collateral (230)
capacity (1)	6:14 28:5 31:15,19	characterization (1)	clarity (1)	25:11 26:10,21,21
191:24	40:24 53:8 61:22	135:22	199:6	27:2,5,22,23,25
capital (6)	87:7 92:25 110:23	characterize (1)	class (1)	28:14,19 29:3,4,8
31:24 36:15 51:21	113:9 114:18	26:13	185:15	29:12,22 47:10,14
145:3,6 276:18	195:15 231:8	characterized (1)	classes (8)	47:24 48:2,10 59:20
caps (2)	268:10 271:17	28:9	81:13,17,19,20 208:8	60:6 67:10,19 71:11
189:8,8	certainly (10)	charge (3)	208:12,13 281:23	71:11,25 75:4,9,10
capture (1)	22:10 31:8 59:25	12:11,13 180:13	classification (1)	77:5,20 78:4,9
97:6	66:20 80:23 83:4	Chase (35)	185:14	79:13 98:18 100:11
careers (1)	86:16 160:11 194:7	29:11,17,20 116:7	clean (1)	101:11,14,17
178:14	232:10	123:3 159:7 167:16	281:2	102:21 105:7 116:4
carried (3)	certainty (17)	167:16,25 171:9,16	clear (18)	116:5,16,17,22
41:14 72:11 73:12	10:2,4 85:24 104:24	175:8 182:15,18,20	7:3 10:13 19:13 62:25	117:19,23,24 118:2
carry (1)	152:10 157:14	187:10 190:18	65:13 84:22 106:6	118:4,5,7,9,16
277:2	180:20 192:10	193:16 194:22,22	109:5 115:22	119:14 121:3,4,7,8
case (13)	203:3 219:10 220:8	194:23,25 195:6,8	117:18 130:21	121:9,20 122:2,4,14
1:7 29:10,13 43:18	221:3,8 227:9	195:16,20 199:8,9	135:23 137:3	122:25 123:4
62:3 85:19 91:8	246:13 263:19	219:2,22,23 220:11	144:16 221:4	124:19 125:2,12,14
197:21 202:9,10,12	283:2	220:12 267:6	249:18 252:18	125:17 126:2,16,24
203:2 291:3	CERTIFICATE (1)	282:10	283:5	137:22,25 138:21
cases (3)	290:3	Chase's (4)	clearer (1)	138:22,24 139:2,2
28:6 71:3 195:15	Certified (2)	187:12,23 190:25	100:7	139:16,18 144:8,10
cash (65)	2:13 290:8	219:22	clearing (2)	144:11,12 147:4,14
25:11 26:10 27:3,3,6	certify (2)	check (2)	258:4,5	147:16,17 148:12
	290:10,16	110:20 111:5	clearly (7)	151:24 152:7 153:3

153:6,11 167:15,16 167:17 169:12,18 169:22 170:2,6,7 171:9,13,16,20 172:7,14,22,22 174:19 175:6,8 176:24 182:14,21 182:22 183:4,21,22 185:24 186:11,14 186:18,20 188:9 190:18,19,23 192:23,24 195:8,9 195:10,12,16,17,18 195:20 196:17,22 196:23 198:23,24 199:3,6,9,15 200:16 200:19 201:2,7,10 201:11,15,23 202:18,24 208:19 209:10,19 210:6,7,8 210:19 216:7 218:18,22 219:2,3,8 219:11,16,20,23 220:11 221:12,16 222:13,19 223:20 231:7 234:3 238:19 239:6,6,7 240:5,16 240:18,19,22 241:5 242:4,24 243:3,9,10 243:13,16,20,24 244:2,7,12,13,21 245:2 250:19 255:10,12,22,25 256:7,18,21 267:5 272:9 278:8 280:5 281:12 282:10,23 collateralized (5) 169:14 170:11 171:5 171:7 251:24 collected (1) 228:19 collecting (2) 39:12,17 collection (1) 226:18 college (2) 8:5,6 Collerton (2) 20:21,22 column (6) 87:18,20,21 88:25 101:20 226:7 columns (3) 87:23,24 90:25 combination (10) 23:22 44:13 93:2,19 163:8,25 164:23 165:2 175:4 280:5 combined (3) 98:17 114:7 192:19	come (30) 17:12,14 19:3 38:5,19 49:17 50:15 53:14 55:4 105:14 115:6 116:13 131:6 135:14,17 151:15 151:17 152:4,13 154:22 164:3 171:4 179:14 211:14 230:14 240:21 242:22 268:25 271:25 272:23 comfortable (8) 41:22 57:16 91:11 129:8 131:15,23 204:3 209:13 coming (6) 40:15,19 92:23 159:5 249:10 267:16 commensurate (1) 218:6 commenting (2) 50:22 215:18 commercial (2) 81:14 287:3 committee (20) 4:4 75:5 153:4,7,14 153:17,21 154:8 217:5,6,7,9,10 221:10,18,21,24 222:12,20,22 communicate (2) 104:5 232:20 communicated (8) 64:24 65:5,10 115:16 161:5 169:24 241:11 250:16 communicating (5) 104:11 107:4 134:16 141:5 145:17 communication (2) 123:22 179:25 communications (3) 107:15 184:22 220:9 comp (14) 18:12 95:18,22 96:7 96:20 211:6 212:19 212:22,24 213:2,8 214:5,11,14 company (2) 10:14 75:20 comparable (1) 138:13 compared (1) 238:17 comparison (3) 29:19 30:5,8 compensation (11) 18:7,10,21 53:16,18 53:23 54:5,13 177:8	213:14,23 competent (1) 56:20 complete (5) 36:13 85:23 166:2 194:13 205:6 completed (6) 95:2 155:19 156:9 205:4 206:16 237:22 completely (7) 46:9 48:6 164:21 199:17,21 206:20 206:24 completion (1) 164:14 compliance (1) 145:2 complicated (1) 174:22 component (10) 53:25,25 54:5,16 68:15 69:17 77:6 96:15 210:16 221:17 components (5) 54:3 74:19 78:16 89:20 186:5 compound (5) 56:17 94:20 96:4 108:22 126:19 computation (1) 272:21 computed (1) 272:8 computer (3) 83:13 84:8,15 computers (1) 84:12 conceived (1) 80:17 concept (2) 137:23,24 concepts (2) 78:19 138:13 conceptually (1) 121:10 concern (7) 24:20 181:7,12,15 209:9,12,15 concerned (1) 116:7 concerning (6) 19:22 56:23 97:20 157:9,22 205:20 concerns (1) 270:5 conclave (1) 155:21 conclude (1)	202:17 concluded (2) 208:21 269:2 conclusion (8) 68:25 71:14 117:14 202:4 224:24 270:16 271:6,25 condition (2) 21:10,16 conditional (3) 33:2 270:13 271:3 conditions (3) 17:15 19:23 88:19 conduct (1) 56:13 conducted (2) 129:17 145:23 conducting (2) 56:14 268:14 confidence (3) 42:4 152:8 175:15 confident (3) 123:4 161:4 203:2 confidential (291) 1:12 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1,18,23 19:1,3,8 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1 65:1 66:1 67:1 68:1 69:1 70:1 71:1 72:1 73:1 74:1 75:1 76:1 77:1 78:1 79:1 80:1 81:1 82:1 83:1 84:1 85:1 86:1 87:1 88:1 89:1 90:1 91:1 92:1 93:1 94:1 95:1 96:1 97:1 98:1 99:1 100:1 101:1 102:1 103:1 104:1 105:1 106:1 107:1 108:1 109:1 110:1 111:1 112:1 113:1 114:1 115:1 116:1 117:1 118:1 119:1 120:1 121:1 122:1 123:1 124:1 125:1 126:1 127:1 128:1 129:1 130:1 131:1 132:1 133:1 134:1 135:1	136:1 137:1 138:1 139:1 140:1 141:1 142:1 143:1 144:1 145:1 146:1 147:1 148:1 149:1 150:1 151:1 152:1 153:1 154:1 155:1 156:1 157:1 158:1 159:1 160:1 161:1 162:1 163:1 164:1 165:1 166:1 167:1 168:1 169:1 170:1 171:1 172:1 173:1 174:1 175:1 176:1 177:1 178:1 179:1 180:1 181:1 182:1 183:1 184:1 185:1 186:1 187:1 188:1 189:1 190:1 191:1 192:1 193:1 194:1 195:1 196:1 197:1 198:1 199:1 200:1 201:1 202:1 203:1 204:1 205:1 206:1 207:1 208:1 209:1 210:1 211:1 212:1 213:1 214:1 215:1 216:1 217:1 218:1 219:1 220:1 221:1 222:1 223:1 224:1 225:1 226:1 227:1 228:1 229:1 230:1 231:1 232:1 233:1 234:1 235:1 236:1 237:1 238:1 239:1 240:1 241:1 242:1 243:1 244:1 245:1 246:1 247:1 248:1 249:1 250:1 251:1 252:1 253:1 254:1 255:1 256:1 257:1 258:1 259:1 260:1 261:1 262:1 263:1 264:1 265:1 266:1 267:1 268:1 269:1 270:1 271:1 272:1 273:1 274:1 275:1 276:1 277:1 278:1 279:1 280:1 281:1 282:1 283:1 284:1 285:1 286:1 287:1 288:1 289:1 290:1 291:1 confidentiality (2) 18:25 19:6 confirm (1) 188:5 confirmed (2) 255:14 258:13 Confirming (1) 182:9
--	--	---	---	--

conflict (4) 32:9 33:7 35:2,7 conform (1) 291:7 confusion (1) 242:23 Congrats (1) 157:2 Congratulations (1) 274:12 conjunction (1) 227:22 connection (9) 25:6,23,25 30:10 55:9 56:14 77:16 220:24 224:12 consequence (1) 116:2 conservative (1) 132:6 consider (1) 30:14 considerable (1) 63:5 consideration (2) 213:20 224:5 considered (1) 17:9 consistent (10) 32:2 43:9 129:22 130:7 133:2 164:6 166:5 189:18 214:6 214:9 constituent (1) 210:5 constituents (1) 57:24 constitute (1) 81:7 construct (2) 47:22 120:25 consuming (1) 143:22 consummated (3) 46:8 116:24 237:19 contact (6) 12:25 15:17,24 16:13 36:25 37:9 contains (1) 185:25 contemplating (1) 180:25 contention (2) 208:22,25 context (10) 115:7 139:22 141:3 141:13 144:25 147:9 155:18 171:14 252:2 275:21	continue (7) 149:19 177:14,17 192:22 249:16 250:17 254:3 continued (6) 33:25 49:15 83:5 119:21 152:24 287:5 continuing (4) 25:8 54:12 129:2 152:25 contract (28) 20:17 21:12 31:11 50:17,18,25 51:9 133:8,10,15,18,20 133:22,25,25 134:5 134:10 157:10 189:24 204:9,11,14 207:20 242:19,21 245:12,15 271:8 contracts (8) 21:7,14 71:18 251:23 283:23 285:10 286:4,11 contribute (2) 33:18 207:5 control (3) 11:23,24 37:17 controller (3) 14:10,11 109:3 convenient (1) 90:18 conversation (32) 57:10 58:24 61:5,15 61:18,19 62:5,12,25 63:4 67:5 97:10,22 102:5,17,18 103:22 103:25 123:21 148:9,13 178:17,19 179:9 211:24 230:25 232:24 233:13 253:23 269:10 275:21 278:24 conversations (22) 57:6,13 63:5 74:24 103:18 104:9 179:3 212:5,8,10 217:16 217:20,23 233:14 233:20 234:16 253:14,21 259:20 259:22 260:2 273:15 conversion (17) 130:9,10,11,14 131:2 266:24,25 267:2,4,9 277:8 278:4,18 279:5,6,7,8 convert (1) 159:22	converting (1) 130:15 conveying (1) 131:21 coordinate (3) 123:13 175:12 182:12 copied (1) 261:6 copies (3) 139:5 142:7 196:14 copy (14) 20:25 21:5,5 95:24 99:20,21 106:13 136:23 140:24 156:19 169:10 173:12 182:9 190:12 copying (1) 107:24 corner (2) 101:4 151:3 corporate (5) 10:6,9,13 180:4 287:2 corporation (1) 12:3 correct (88) 8:17,18 9:2,20,22,23 10:8,18,19,22 11:18 11:19 12:9,10,18,19 20:8 21:3 25:10 31:15,20 35:15,16 41:16 44:2 47:4,6 48:18 56:7 63:7,8 65:18,19 66:14,15 66:18 68:2 69:17 75:11 77:25 78:5,12 82:3 83:22 88:4 101:6,9 104:15,23 108:16 109:15 112:3 126:17 131:9 131:10 145:24,25 162:13,25 167:24 168:4 183:11 186:13 187:3,14 188:4 201:16 202:6 202:9 203:4 207:23 240:12 241:8 242:2 245:13 248:17,18 249:22,23 256:12 261:7 264:4,12 267:10,11 285:8 286:5 291:8 correctly (3) 77:21 78:18 165:24 correspondence (1) 166:21 cost (2) 54:11 97:13 costs (1) 79:21	counsel (25) 6:10 18:15 52:3,10 72:4,7,16,17,19,21 72:24 73:4 74:25 76:5,5,10,12,22,22 217:8 233:21 234:16 260:17 273:15,16 Counsel's (1) 260:18 counterparties (4) 13:23 29:14 121:24 236:14 counterparts (4) 35:21 36:4 93:25 131:15 counterparty (1) 27:21 COUNTY (1) 290:6 couple (6) 6:17,23 26:14 94:24 184:16 270:11 course (11) 16:7 30:15 34:19 104:12,14 165:3 175:19 183:13 195:14 212:14 230:19 court (39) 1:2 5:20 6:25 19:8 56:23 57:4 59:3,8 66:14 67:8 68:14,16 68:22 69:7,9,10,16 71:19,23 72:4,13 73:14,16,17 74:2,14 104:15 145:24 156:7,21 160:22 173:18,25 174:5 216:21 245:13,18 246:11 247:2 courtroom (1) 83:24 cover (4) 89:22 97:13,21 140:21 covered (2) 251:11 267:25 co-global (2) 11:8,9 crafting (1) 35:24 Craig (2) 255:7,13 CRAWFORD (1) 3:8 create (6) 137:8 144:21 145:6 194:17,18 283:24 created (4)	240:4 262:19,22 284:7 creating (4) 262:4,7,25 263:4 creation (2) 261:17,22 credit (3) 36:9 115:11 255:13 creditors (16) 4:4 34:23 75:5 153:4 153:7,14,16,20 154:8 217:8,10 221:10,18,21,21 268:9 critical (7) 16:16 17:9 64:12 102:11,14 156:25 196:23 cross (2) 119:6 202:15 CRR (2) 1:18 290:23 cry (1) 191:14 cure (15) 95:18,21 96:9,20 109:2 211:6,8,10,11 211:19 212:6,11,17 214:17 263:17 curious (1) 65:24 current (1) 9:18 currently (1) 8:15 CUSIP (1) 196:17 custodied (1) 68:7 customer (7) 67:17,24 68:6,10 101:19 270:21 272:13 C3 (2) 270:11 285:19
D				
D (1) 3:20 daily (1) 215:5 Dan (2) 189:2 255:14 data (6) 123:3 271:20,21,22 272:8,16 date (28) 30:24 32:5,6 46:15,19 98:2 106:8,12 146:12 148:23				

<p>155:3 161:18 173:4 181:24 184:7 190:3 199:24 203:10 256:10,12,14,15,19 257:7 260:13 274:4 277:15 291:4 dated (17) 51:21 55:4 106:24 114:2 173:2 184:5 199:22 200:9 257:5 260:11 274:2 289:15,17,19,21,22 289:23 dates (1) 32:23 Dave (2) 170:4,14 David (6) 168:21,23,25 170:20 170:24 172:2 day (27) 2:10 3:3 6:10 9:8 16:8 23:2 25:9 46:5 63:6 76:15 89:18 104:12 104:14,17 139:14 146:4 181:6,12 185:16 189:19 195:14,24 247:14 247:15 268:15 288:15 290:21 days (4) 6:17 9:10 26:14 256:22 day-to-day (1) 139:24 DC (2) 3:13,19 deadline (1) 231:9 deal (92) 8:24 17:9 18:9 24:19 35:25 38:12,15 42:7 46:6,8,10,10,13,21 47:9,13,18 48:24 49:4,9 50:3,7 53:8 53:15 56:6,10,14,16 59:2,4,7,8 60:8 64:12 68:19,23 71:18 73:21 74:5,13 74:19 75:6,14 78:17 78:23 79:24 95:2 102:11,14 107:5 108:12 111:21 116:23 117:10 118:25 119:3,3 123:5,10 124:7 125:24 137:2 138:16 157:25 158:9 174:13,22 177:7 178:24</p>	<p>183:24 194:18 221:17 222:25 223:12 225:18 227:23 240:7 246:10,24 247:4 249:3,7 251:18 252:20 253:9 254:4 259:14 263:11 265:11 272:25 273:13,21 dealer (1) 145:5 dealing (4) 23:22,23 25:12 174:12 deals (1) 263:14 debt (2) 185:25 287:2 Debtors (1) 1:9 December (4) 187:14,20 206:17 219:5 decided (7) 40:25 113:17 115:14 141:8 270:4 275:24 275:25 decision (6) 44:20 174:2 220:5 276:21 277:4,6 deemed (2) 16:16 114:5 default (1) 115:11 defaulting (5) 135:19 137:4,16 145:9,12 definitely (2) 118:18,20 definition (1) 251:7 degree (8) 7:22,23 8:3,7 148:17 152:8 175:20 176:3 deliver (14) 122:15 126:2 129:6 135:22 137:22 138:14,18 139:16 153:20,25 156:24 167:17 182:24 183:4 delivered (18) 20:19,20,25 119:2,15 123:5 125:24 153:10,13,16,24 154:4 166:3 167:16 183:21,23 222:22 234:3 delivering (2)</p>	<p>135:18 153:23 delivery (5) 122:2 222:2,4,7,19 delta (4) 128:20 166:16 209:17 209:21 department (3) 11:23 12:6 254:24 deposed (1) 140:7 deposition (41) 1:13 2:9 5:16 6:20 18:19 51:18 52:5,12 67:2 80:7 86:11,20 86:24 99:18 106:2 106:16 110:9 120:6 127:19,24 136:12 136:15 140:5,14,16 140:22 141:23 142:5 146:14 148:25 154:14 155:5 168:11 182:2 196:5 200:2 203:12 288:7 290:12,13 291:4 depositions (3) 19:2 254:6 288:7 depository (1) 147:18 deposits (3) 253:2 286:12,22 depots (1) 151:24 derivative (4) 77:10,17 251:23 266:19 derivatives (15) 126:25 259:15,16,23 260:4,5 267:10 283:19,23 285:8,10 286:3,11 287:3,4 derived (1) 45:23 DeRosa (1) 14:12 describe (10) 27:18 43:13 61:6 77:2 79:7 83:15,23 108:7 108:18 109:16 described (8) 19:15 40:5 50:3,8 121:11 131:5 176:17 223:2 describes (1) 101:17 describing (5) 101:22 132:11 133:7 147:20 148:8 description (6) 7:13 83:21 84:4 115:3</p>	<p>186:12 266:12 descriptions (1) 81:12 designation (2) 18:19,24 designations (1) 19:3 designed (1) 202:8 despite (3) 176:14 177:3 178:8 detail (7) 25:15,22 46:5 58:23 109:17 196:17 206:2 detailed (3) 75:3 83:20 84:3 details (17) 16:6 26:4 57:9 58:21 61:4 62:24 77:13,14 103:25 120:16 142:17 209:4 219:14 224:4 239:23 253:23 255:12 deteriorated (1) 191:21 deteriorating (2) 143:17 191:19 determination (5) 91:20 122:10 124:16 220:18 276:25 determine (24) 68:11 92:5 119:2 125:5 129:4 135:9 139:15 150:9,25 151:5 164:18 202:12 243:4,24,25 244:3,13,23 251:4 253:5 265:15 266:8 271:12 277:17 determined (15) 44:12 112:22 118:15 129:9 132:20 150:9 151:19 201:14 231:23 232:15 241:24 242:16,25 245:3 253:7 determines (1) 68:7 determining (6) 67:12 109:4 124:13 127:15 128:17 276:24 develop (5) 89:19 122:13 212:23 213:7 286:16 developed (4) 129:12,14 171:22 181:3</p>	<p>development (4) 10:7,9,13 129:10 difference (24) 28:13,17 30:3 44:10 44:21 45:10 48:12 48:16 72:10 73:11 88:16 89:13 90:3,5 90:10 94:2 96:15 97:2,6 118:8 162:11 162:23 164:19 234:3 different (36) 39:13,17 46:10 47:21 48:14 52:8 59:4,8 59:17 60:10,20,23 63:23 68:13 73:19 78:19 82:17 97:9 116:19 124:21 125:3,21 138:17 159:6 163:5 186:10 223:6,10,17 234:6 238:22 247:11 268:7 279:7 280:6 286:18 difficult (5) 14:21 33:24 174:23 199:5 272:22 difficulties (5) 135:24 171:8 215:4 219:22 271:17 diligence (4) 13:9,13 268:14,18 dining (1) 84:11 direct (13) 14:5,7,8 37:12 91:2 108:15 180:14,18 181:17 248:8 261:17,22 277:23 directing (1) 136:20 direction (2) 111:5 175:12 directly (2) 37:12 179:15 director (2) 9:10,12 dirty (2) 272:8,16 disagree (1) 58:11 discipline (1) 142:13 disciplined (1) 143:13 disclose (1) 76:2 disclosed (4) 72:12 73:14,15 76:4 disconcerted (1)</p>
---	---	---	---	--

23:25 discount (20) 42:18 43:3,7,13,15 128:19,20 135:19 135:23 137:4,5,7,17 144:17 235:24 238:3,16,17 275:15 275:16 discovered (1) 125:22 discuss (6) 17:15 34:24 218:12 268:3 273:12 278:20 discussed (11) 47:21 59:15 61:25 97:17 125:18 163:10 220:20 221:9 227:17 234:17 245:23 discussing (6) 119:14 159:8 217:24 234:19 249:21 268:5 discussion (17) 9:5 18:20 45:3 97:19 147:24 158:23 159:12 187:16 206:15 209:20 211:7,15 222:18 233:15 267:13 269:5 273:22 discussions (51) 12:16,21,22,25 13:5,8 15:6,12 27:13 40:15 40:17,18,20 60:15 64:23 65:7 72:4,6 72:15 74:15 93:6 95:3 96:23 102:15 115:16 118:20,22 119:8,10,12 178:13 187:19 208:24 209:23 211:19,21 212:16,18,22 214:9 218:10 220:14 222:23 227:3 237:10 260:6 267:20,23 268:23 269:22 270:2 disposes (1) 276:19 disregarding (1) 277:25 disruption (2) 24:17 115:8 distinction (1) 10:15 DISTRICT (1) 1:3 division (1)	140:7 docs (3) 132:5 133:6 135:4 document (98) 30:22 31:3,13,16,22 51:19,23 52:6,14,16 70:8,8 80:8,10,20 82:3,18 83:10 86:14 87:2,14 91:5,6,19 93:10 97:24 98:4,5 98:8,9,16 99:3 100:14,17 101:8 102:4 106:3,13,14 106:17 107:12 110:11 120:7 130:12 136:13 146:10,15 148:21 149:2 154:15,15,17 154:22,25 155:7,8 161:16 168:5 174:7 181:22 182:3,6 184:10 189:25 190:6,7 203:8 213:4 215:13 251:13 252:3 254:8,12,21 257:4,18,23 258:21 260:10,16 261:14 277:11,13,16,20 284:16,18 286:14 289:11,12,13,13,14 289:14,16,18,20,24 documentation (9) 156:5,8,23 157:3,5,8 157:13,22 245:22 documented (1) 246:24 documenting (9) 155:23 156:3,12 245:11,19 246:3,10 246:14,25 documents (16) 52:9 54:20,25 70:13 70:19 71:4 86:13 97:11 106:6 133:7 134:13 135:7 172:12 222:11 260:19 284:19 doing (22) 22:11 23:17 25:5 30:15 39:10 40:4,8 40:10,13,16 88:12 108:10,19,24 132:25 170:5 191:23 192:25 193:16 228:18 253:13 279:20 dollar (6) 18:11 60:4,5 90:15 265:20 284:4 dollars (32)	60:9 62:20,22 63:6,10 63:17 64:11 65:25 66:11 78:3 92:15 143:8 151:17 152:9 186:20 188:12 212:3 224:13,16 248:21 252:24 264:7,12,16,23,24 282:22,23 285:14 285:20 286:4,8 dot (1) 95:24 double (1) 14:23 draft (1) 20:17 drafted (4) 110:21 111:6,7,16 drafters (1) 111:20 drafting (3) 50:22 80:19 210:10 drafts (4) 81:2,5 82:15,17 drive (1) 145:9 driven (4) 26:22 113:18 141:11 234:4 drop (1) 14:21 dropped (1) 250:7 DTC (3) 268:15 269:20 270:4 DTCC (14) 146:22,23 147:5,14 147:15,18 159:7 267:18,21,24 268:8 268:11,20 269:4 due (4) 13:9,13 268:14,18 duly (2) 6:4 290:13 duties (7) 9:12 11:20 30:15 31:25 32:2 35:3 56:20 D-P (1) 133:11	162:10 164:13 167:3 191:18 201:19 204:10 214:6 219:5 220:20 221:9 223:17 227:19 230:8,8 245:10 249:13 264:22 266:23 272:6,11,15 277:9 282:8 earliest (7) 113:23 127:25 136:21 155:11 182:7 203:16,23 early (16) 17:19 49:11,13 83:6 102:21,24 103:2 107:5,16,16 109:25 123:18 137:9 144:22 148:7 215:17 East (2) 2:10 3:5 eastern (5) 147:22 254:19 257:17 261:11 274:8 easy (1) 113:20 EBOC (1) 189:7 economics (2) 8:2,3 education (3) 7:14 8:8,9 effect (15) 5:19 70:19 71:5 116:10 129:5,16 174:25 177:9 178:13 193:2 213:18 220:11 256:24 274:20 279:11 effected (5) 115:21 116:11 119:16 130:4,5 effecting (1) 175:8 effective (1) 101:21 effectively (1) 194:23 effects (1) 238:11 effort (20) 39:25 40:3 65:18 116:3 118:25 165:8 169:5,16 202:8,11 227:21 228:3,10,23 229:3,11 241:7 244:8,10 246:16	efforts (7) 150:25 183:16,19 236:11 240:21 256:23 271:10 eight (8) 16:16,18 17:2,4,8,11 35:5 37:25 either (14) 22:5 54:24 76:21 115:24 128:16 154:2,3 215:2 222:10 232:22 235:13 252:22 259:18 260:7 electrical (2) 7:22,23 electronic (1) 21:2 element (6) 64:15,18 116:19,23 117:11 127:3 elements (20) 22:17 26:25 59:13,22 59:24 60:4 68:18 69:12 76:25 80:13 99:17 109:7 126:22 159:10,14 186:7 223:2,10 265:11 272:21 elimination (1) 84:25 Emanuel (2) 4:3 217:9 emerged (2) 44:17 126:11 emerging (2) 107:11 164:24 emphasize (1) 200:17 employ (1) 79:18 employed (7) 8:15 9:22,25 10:14 17:16 32:22 34:10 employee (3) 30:21 33:3,14 employees (6) 34:22 77:9 177:13,22 178:25 213:25 employment (12) 9:21 11:13 19:23 20:14 31:5,7,11 32:13 77:9 179:6 217:13,25 enabled (1) 119:5 encumbered (2) 201:25 240:20 endeavor (2) 63:9 64:10
---	---	--	---	---

ended (2) 208:20 223:18	287:2	230:20 278:13	265:3,24 266:6,13	277:13 281:6,7
ends (1) 278:23	equity (4) 54:12 79:5 95:11	event (7) 27:25 28:22 47:25	266:18 283:6,17	283:7,7,11 284:13
engage (2) 131:7 251:5	258:11	51:10 183:20	exchange-traded (8) 259:15,16,23 260:4	284:17 285:6 286:9
engaged (6) 12:16 26:14 237:10	equivalent (1) 117:20	189:20 231:4	267:10 283:18	289:10,11,12,13,13
252:7 256:23	Eric (6) 16:21 36:10,17	events (2) 70:20 71:6	284:3,8	289:14,14,15,16,17
276:15	110:16 112:12	eventually (1) 270:23	exclamation (3) 155:22 173:14 216:16	289:18,19,20,21,22
engaging (1) 93:24	139:8	everybody (8) 6:24 39:7 75:23 85:25	exclude (2) 114:4 180:18	289:23,24
engineering (2) 7:22,24	Erica (2) 4:7 217:4	86:3 178:9 208:6	excluded (1) 273:21	EXHIBITS (1) 289:9
England (1) 7:25	errata (3) 288:7,8 291:2	279:3	excluding (2) 74:24 273:14	existed (1) 159:5
enjoy (1) 80:3	errors (1) 291:8	everyone's (2) 225:6,7	exclusion (1) 141:24	existence (2) 271:4,25
enlargement (1) 213:18	especially (1) 123:12	exact (1) 193:10	Excuse (1) 226:10	existing (1) 126:9
enormous (1) 41:25	ESQ (10) 3:7,8,14,20,21 4:7,13	exactly (5) 74:12 104:19 131:4	exercise (22) 22:23 64:15 91:9	expect (7) 29:24 41:3 43:25 46:2
ensuing (1) 52:25	4:19,20,23	228:25 234:25	93:23 125:4 126:7	62:12 154:3 232:7
ensure (7) 123:14 174:17,24	essence (1) 183:12	EXAM (1) 289:3	129:10 130:18,23	expectation (2) 194:4,6
181:20 182:13	essentially (3) 144:9 145:20 224:15	EXAMINATION (6) 6:6 217:2 248:2	147:17 148:2,11,14	expected (7) 26:11 50:13 142:16
202:8,9	establish (1) 42:4	275:11 281:4 285:2	164:2,14,17 166:20	143:5 158:2 194:15
ensuring (2) 142:12 143:14	established (1) 187:5	Examiner (1) 4:10	202:7,23 203:6	246:15
enter (1) 19:21	establishes (2) 68:5 239:4	example (7) 29:17 36:10 92:3	210:17 252:7	expecting (2) 32:25 210:3
entering (1) 209:24	establishing (2) 262:12 274:21	114:6 231:17	exhibit (137) 20:11 30:22 31:2	expense (1) 14:19
entire (1) 105:3	estate (4) 6:10 34:12,16 235:9	253:10 264:21	51:18 52:14 53:5	expensed (1) 54:11
entirety (1) 249:5	estates (2) 177:18 224:9	examples (1) 59:11	54:18,19 55:2,3	expenses (1) 97:21
entities (2) 15:10 243:15	estimate (16) 96:11 108:24 148:3,7	exceed (1) 96:19	80:7,20 82:3 86:12	experienced (1) 115:9
entitled (9) 51:19 76:12 100:10	150:5 170:18	exception (1) 83:25	90:22 93:11 95:15	experiencing (1) 191:25
136:25 196:15	212:12 213:9	excess (25) 32:14 59:19 60:7,8	95:17 97:24 98:4,11	expertise (1) 159:12
200:15 203:23	214:16 215:4,7,8,10	68:7,11,12 77:6,7	106:2 110:9 113:23	explain (8) 37:7 130:24 132:10
257:15 278:3	240:5 271:10 284:8	150:4 172:22 175:6	120:6 125:18	140:9 144:3 149:14
entity (3) 9:24 177:17,23	estimated (2) 252:24 272:11	175:6 189:17 204:8	127:19 131:9	195:4 248:19
entries (2) 88:21 95:18	estimates (1) 272:5	270:18,20 271:2,3,4	136:13 141:24	explained (1) 269:14
entry (4) 285:11 286:10,11,20	et (3) 1:8 72:25 81:14	271:11 272:2,6,11	144:15 146:10,14	explains (1) 193:4
envisaged (1) 279:15	Europe (1) 10:22	272:12	148:21,25 151:25	explanation (1) 43:14
equal (4) 18:6,9 230:5,22	European (2) 10:24 236:25	exchange (10) 77:10,10,17 149:12	154:14,24,25 155:5	explanatory (1) 128:14
equals (1) 229:10	evening (20) 20:4,5 35:19,24 39:5	150:21 151:20	159:19 160:13	explicitly (1) 284:3
equipped (1) 159:16	57:8 83:7,8 117:6	248:11 251:24,25	161:16,22 162:16	exposure (1) 115:15
equities (1)	126:10 142:24	286:13	163:13,20 164:3,6	exposures (1) 116:9
	158:14 165:3	exchanged (1) 126:25	164:15,17,22 165:4	express (3) 64:9 113:12 198:21
	194:24 214:10,17	exchanges (1) 253:2	165:10,20 166:7,20	expressed (2) 90:12 113:11
		exchange-listed (24) 248:25 249:17,19	168:4,6,7,16 169:3	
		250:6,17,22 251:8	169:5 173:2,5	
		251:12,16,22 252:3	181:22 182:2 184:5	
		252:10,11,19,25	189:25 190:4 196:5	
		253:18 264:25	199:22 200:2 203:8	
			203:12 208:4,6,7	
			210:10,18 211:5	
			214:4,12 215:12,25	
			225:4 226:24	
			229:19 230:7,22	
			231:17 235:4 248:7	
			249:20 251:9 254:7	
			257:5,12 260:11,25	
			265:2,4,21,23 266:9	
			266:11,14 274:2,6,6	

expressing (1) 64:13	259:6 260:8,11 261:3 262:20	176:17	filing (11) 5:7 12:23 13:21 15:8 15:18 20:7 22:3 24:18 34:6 145:20 145:21	firm (23) 14:12 24:23 25:19 35:22 36:5 37:15 138:25 142:24 143:9,12,25 160:4 175:9 176:19 191:19 217:9 232:5 234:21 246:5 248:5 254:23 256:24 275:17
extend (4) 28:18,21 195:10,16	263:12 266:14 274:2,7 278:2,12,24 280:8 285:7 289:15 289:17,19,21,22,23	far (4) 183:6 184:17 206:13 240:9	final (16) 59:14 82:16,22,23 189:23 196:20 197:24 203:25 204:12 207:20 225:5 229:19 249:9 249:11 263:20 271:14	firms (8) 38:10,12,15 115:12 236:3,7 237:25 238:15
extended (3) 29:2 48:3 239:9	e-mailing (1) 249:19	Farr (3) 3:16 73:2 76:5	finalized (2) 196:21 197:24	first (30) 8:21 9:6 12:21 19:16 28:15 35:12 51:2 55:2,15,25 61:24 69:23 76:11 98:16 99:25 100:7,8,20 102:18 112:7 139:6 190:11,13 228:15 246:9 255:9 256:8 261:8 281:12 282:14
extending (3) 18:2,4 27:21	e-mails (19) 110:14 111:2 128:2 141:3 159:18 162:2 168:20 173:6 182:6 184:14 190:9 191:18 195:6 196:6 196:7 203:13,15 215:21 245:21	fault (1) 225:15	finalizing (1) 198:5	fit (1) 286:22
extends (1) 47:23		favorite (2) 225:6,7	finally (3) 91:21 92:13 205:4	five (4) 54:7,8 274:11,17
extent (5) 75:17 109:8 125:22 129:13 227:12	F	fear (1) 24:19	finance (12) 11:22 12:6 14:9 39:4 42:2 118:25 119:13 226:19 244:9,11,22 254:24	fixed (2) 42:18 143:15
extinguished (2) 117:12,21	F (5) 1:18 2:11 4:20 290:7 290:23	feature (1) 44:6	financed (1) 121:23	Flemming (2) 189:2 196:14
extinguishing (1) 117:20	fact (22) 32:12 33:10 34:3,25 35:13 37:24 38:13 38:14 41:23 43:18 65:3,12 119:4 121:22 140:4 143:3 182:23 188:7 213:15 215:18 240:20 260:19	February (1) 18:6	financers (1) 238:18	FLEXNER (1) 3:10
extra (6) 53:15 150:25 151:3,5 152:14 195:15	fact (22) 32:12 33:10 34:3,25 35:13 37:24 38:13 38:14 41:23 43:18 65:3,12 119:4 121:22 140:4 143:3 182:23 188:7 213:15 215:18 240:20 260:19	fed (58) 24:24 25:2,20 26:3,19 26:20 27:2,4,8 29:8 29:10,17 30:11 46:23,24 101:12,13 101:15,18 115:13 115:20,22 116:12 116:14,15 117:5,7 118:12,12 130:15 167:15 168:2 171:17 190:22 192:3,6,19,25 193:10,18,22 206:8 206:9 210:2,3,6,7 210:20 218:17,19 218:23 219:8,11,19 220:7 224:17,18 267:7	financial (12) 11:18,21,23 14:11 20:14 81:11 88:9 93:15 109:3 129:11 162:9,10	floor (8) 4:5 38:21,24 49:10 61:10,11,13 84:11
extract (1) 238:25	fact (22) 32:12 33:10 34:3,25 35:13 37:24 38:13 38:14 41:23 43:18 65:3,12 119:4 121:22 140:4 143:3 182:23 188:7 213:15 215:18 240:20 260:19	feel (6) 35:7 161:3 176:3 206:10 209:13 233:8	financing (9) 27:20 48:7 79:15 118:6 136:10 137:23 143:13 234:5 239:3	flow (1) 203:15
extreme (2) 23:23 115:8	fail (1) 176:22	feeling (1) 148:20	find (23) 24:22 62:18,21 63:10 63:21 64:10 65:16 65:25 102:12 120:14,20 149:12 150:20 151:5 172:20 175:19 179:6 183:16 228:15 231:7 239:16 246:24 248:10	focus (13) 23:21 24:14 161:7 181:11,14 212:14 225:17 234:11 241:3 250:18 254:8 256:25 259:18
extremely (5) 108:11 143:13 174:11 199:5,5	fail (1) 176:22	felt (5) 56:19,20 175:20 259:2,4	finding (9) 62:9 63:16 102:20 103:11 147:12,25 176:5 181:15 231:3	focused (1) 34:17
e-mail (132) 21:2 66:24 69:16,21 70:2,3 99:5,6,9 106:18,19,23 107:23 109:5,20 110:15,16,19 111:23,25 112:5,11 112:12 113:23,24 120:9,12 123:7,7 124:10 127:21 128:7,8 131:6,9,11 131:12,21 133:24 136:25 137:15,19 139:4 141:14,15 142:2,6,25 144:16 146:20 147:2,6 149:3,5 155:5,11 158:15 159:17 160:16,19 169:9 173:2,9,11 183:7,12 184:5,18,21 185:9 188:6,8,13,14,22 189:2,6 190:10,11 191:2,10 192:13,14 193:5 196:9,10,12 197:3,12,18 198:21 199:22 200:9,17 201:19 203:16 204:20 205:13 206:18 216:4 254:9 254:11,14 255:3,6 255:19,21 256:19 257:5,14,19 258:24	failure (2) 187:12,23	fight (1) 70:11	finished (1) 85:10	folks (41) 13:17 15:17,24 22:11 25:2 26:8 34:14 35:20,23 36:3 37:5 37:14 38:20,23 39:4 39:23 40:3,12,13,25 44:14,15 66:9,10 79:22 112:15,21,22 112:25 123:9 124:2 124:6 141:6,8,12,12
	fair (4) 26:13 79:17 272:17 286:2	Figuerola (1) 4:5		
	fairly (5) 41:8 46:2 65:15,17 75:2	figure (4) 265:20 266:12 285:23 286:3		
	faith (5) 149:10 150:6,7,12 250:3	file (1) 255:11		
	familiar (2) 224:10 255:2			
	familiarity (1) 159:13			
	familiarize (1) 136:17			
	family (1) 9:25			
	fantastically (1)			

<p>157:18 159:8 179:20 227:11 260:8 follow (4) 23:16 25:6 92:10 275:9 followed (1) 245:12 following (5) 24:17 156:6 245:17 246:10,25 follows (5) 6:5 120:14 152:4 185:9 196:16 force (1) 5:18 forget (1) 49:3 forgive (1) 275:18 form (13) 5:10 46:6 126:18 132:23 134:25 167:3,4 177:15 213:24 229:6 243:13 249:20 283:21 formal (1) 22:16 forms (1) 213:13 formula (5) 68:12 270:19 279:21 280:2,2 Forrest (1) 196:13 forth (7) 20:13 91:22,24 92:9 93:4 215:22 290:12 forum (1) 268:6 forward (3) 142:14 152:17 169:17 forwarded (1) 258:2 forwarding (1) 128:8 found (13) 89:7 105:16 151:23 152:14 173:15 183:8,14 240:10 241:17 248:14 253:10 265:21,22 foundation (23) 44:4,25 48:20 68:25 69:19 71:16 74:10 78:7 94:12 96:22 98:20 101:23,24 108:22 113:7 125:20 146:6</p>	<p>162:15 186:16 240:14 244:16 270:8 271:6 four-page (2) 184:5 289:17 frame (2) 35:10 219:5 franchise (3) 177:13,14,22 Francis (2) 254:15 258:3 Frank (1) 254:24 free (1) 174:18 Friday (53) 12:23 13:10 23:4,6 46:14 57:8 59:12,18 60:11 62:23 64:7 65:16 66:12 73:25 74:13 75:10 102:7 102:22,24 103:2 104:16 105:10,16 105:17,21,22,22 118:21,23 119:9 120:20 121:19 122:5,8,10 126:11 131:17 135:24 147:21 148:2,15 158:8,11,12,15 176:19 181:4 183:15 185:23 196:3 231:2 253:13 278:14 friend (1) 210:14 friends (1) 6:16 front (6) 144:14 161:22 162:16 248:7 266:10 281:8 front-end (1) 131:16 fulfill (1) 56:20 fully (5) 169:14 170:11 171:5 171:7 270:21 functioning (2) 177:17,23 fund (9) 24:23 143:12 176:19 192:22 194:22,24 195:20 218:12 256:23 funded (3) 29:13 175:10 195:19 fundors (1) 24:20 funding (27)</p>	<p>23:22 24:13,22 25:7 25:19 29:14 142:20 142:23 143:2,4,7,9 143:14,16 191:19 191:23,24 192:2,2,4 194:16,20 195:2,7 195:13 212:15 226:2 fungible (1) 84:5 further (23) 5:9,15 112:11 128:10 131:11 132:3 139:4 151:10 156:18 162:4 163:15 188:13,22 193:5 205:13 206:18 216:20 248:19 253:22 275:5 284:10 288:4 290:16 futures (1) 24:3 FX (7) 149:11,20,21 150:16 150:19 250:4 253:10 FYI (1) 280:10 FYIC (1) 123:15</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>Gaffey (48) 3:7 6:7,9 9:3 15:3 18:22 19:12 27:12 51:16 57:18,25 58:5 58:11 69:22 70:10 72:17,21 73:2,7 75:22 76:14 90:16 90:21 98:25 99:7,10 99:15 106:9 112:6 120:4 140:17,20 154:18,20 158:13 161:10,20 168:10 168:14 172:25 184:8 207:12 273:17 275:9,12 280:23 284:21 289:4 gain (6) 16:9 78:24 80:3 245:6 245:7 250:10 GALLAGHER (1) 3:16 gap (2) 168:6,12 Gary (1) 261:4 Gavenda (1)</p>	<p>261:5 gears (2) 218:14 225:16 Gelband (6) 16:21 36:14 136:23 139:5 140:24 142:7 general (11) 21:22 23:15,19 57:11 157:15 158:7 160:5 218:16 238:14 251:20 282:9 generally (7) 56:4 58:15 152:23 211:25 218:20 223:8 237:25 generate (3) 116:21 239:6 286:23 generated (10) 39:13,17 45:19 83:2 180:3,21 214:17,19 250:2 272:6 generating (3) 79:23 83:10 214:23 genuinely (1) 201:21 Gerard (7) 128:2,8 136:22 200:6 200:7 269:24 280:9 getting (13) 23:13 27:3,5 32:16 66:20 81:7 173:13 173:19,22 191:6 196:22 198:22 213:5 Gilles (1) 113:25 give (23) 6:25 7:13 23:19 25:22 36:11 62:16 83:20 84:4 99:20 115:3 116:21 122:11 134:23 137:6 158:7 161:8 170:17 200:15 206:2 239:21 246:19 251:7 278:7 given (25) 28:19 34:4 35:6 37:18 66:6 79:5,7,9 85:17 111:16 128:22 154:7 155:17 177:15 199:7 201:9 210:22 215:5 218:24 231:6,19 232:16 249:11 285:16 290:14 giving (5) 47:9 58:20 238:19 283:11,13 global (1)</p>	<p>10:17 GMT (3) 147:23 159:22 254:19 GMTs (1) 197:17 go (27) 19:6 27:11 35:9,11 45:25 46:5 48:23 60:22 94:15 95:15 99:22 102:5 113:10 126:20 158:14 161:21 167:19 177:9 198:10 233:23 240:14 246:21 262:9 274:11 276:23 278:11 279:2 goal (8) 89:25 90:2 173:13,20 173:22 175:3,21 176:4 goals (1) 105:21 goes (8) 42:2,2 92:12 97:8 111:4 152:3 193:10 280:14 going (109) 6:18 16:25 17:7 34:18 39:14,18 42:11,21 43:19,21,23 45:5 47:15 53:10 57:4,21 57:25 58:3,5 66:13 66:17,21 79:2,4,18 81:6 86:10 92:2 94:15,25 95:2,4,9 97:4 108:25 110:3,3 110:7,23 115:21 116:23 119:15,16 121:7 126:4,12,14 131:17,24 134:17 134:18,20 135:10 135:12,13 136:3,7,9 143:4 145:23 146:22 150:24 156:3 160:3 163:6 163:15 164:5 165:11,25 166:3,5 166:15 168:3 171:16,19 179:11 181:5 184:15 187:5 188:25 192:22 193:2,17 194:8,15 199:13 208:9 214:18 216:3,18,19 218:17 220:7,10 221:16 226:21 229:5 233:5 244:9 251:5 254:8 257:19 258:13 260:3</p>
---	---	---	---	---

262:13 270:22,23 271:13 274:16 good (18) 6:8 109:6 149:10 150:6,7,11 158:13 161:14 196:21,22 198:22 212:12 213:9 236:21 248:4 250:3 258:13 272:11 Gotshal (2) 84:5,17 governed (2) 26:19 44:20 governing (1) 114:12 government (9) 28:20,24,25 81:13 88:21 89:4 226:5,9 255:11 governments (4) 89:8 226:12,14 286:25 grade (1) 114:6 graduate (1) 8:3 granted (1) 54:5 great (6) 24:19 66:5 142:12 157:25 232:9,11 Greenwich (1) 274:8 gross (1) 132:16 ground (1) 6:23 group (5) 17:2,4 49:6 153:13 268:11 groups (1) 35:23 grow (1) 166:18 guess (7) 8:23 22:8 31:10 69:5 144:3 247:7 249:6 guidance (1) 134:24 guidelines (3) 114:4,11,14 guys (2) 131:14 140:25	135:5,8 136:10 137:6,17,23 138:6 169:14 238:18 haircuts (9) 26:19 27:22 28:4,7 29:5 118:6 170:12 234:5 239:3 hall (1) 7:10 Hamish (2) 3:14 210:14 hand (7) 87:14 131:3 178:21 204:17,18 257:11 290:21 handing (1) 254:5 handwriting (9) 86:25 87:4,10,12,15 87:18 88:2,5,25 handwritten (3) 88:8,21 95:16 happen (6) 32:17 129:24 137:4 232:4 267:14 274:24 happened (9) 24:2 35:18 73:24 104:25 105:15 187:15 193:12,13 193:14 happening (3) 117:22 164:25 198:14 happens (2) 234:10 236:2 hard (16) 20:25 21:5 45:2 64:6 65:22 133:10 134:15,17,21 135:3 135:9 176:18 178:9 181:20 196:25 202:17 hate (1) 14:20 hazy (4) 55:16 102:23 123:3 158:18 head (15) 7:3 9:18 10:6,9,12,18 14:13,16,17 20:22 36:7,8,9,15 37:17 heads (1) 123:14 hear (10) 6:18 7:18 14:22 38:9 49:7 55:8,15 97:10 216:22 270:3 heard (7) 21:21 49:7,8 55:6,11 164:11 220:23	hearing (18) 46:14,21 57:13 58:16 58:18 59:3 66:13,17 104:21 105:3 145:23 146:4 155:20 173:25 174:4 245:13 246:11 247:2 hearings (3) 56:22 57:3,5 heart (1) 194:21 hedge (1) 218:12 HEDGES (1) 4:3 held (10) 2:9 8:19 9:17 219:2 225:24 240:2,11 241:17,25 255:22 help (2) 173:13 191:14 helped (1) 175:3 helping (3) 108:24 175:9 191:24 helps (1) 207:7 hereinbefore (1) 290:12 hereunto (1) 290:20 hero (2) 108:3,8 heroics (2) 176:14 177:3 high (5) 114:6 148:7 211:17 211:22 212:3 higher (1) 89:5 highly (291) 1:12 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1,18,23 19:1,2,7 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1 65:1 66:1 67:1 68:1 69:1 70:1 71:1 72:1 73:1 74:1 75:1	76:1 77:1 78:1 79:1 80:1 81:1 82:1 83:1 84:1 85:1 86:1 87:1 88:1 89:1 90:1 91:1 92:1 93:1 94:1 95:1 96:1 97:1 98:1 99:1 100:1 101:1 102:1 103:1 104:1 105:1 106:1 107:1 108:1 109:1 110:1 111:1 112:1 113:1 114:1 115:1 116:1 117:1 118:1 119:1 120:1 121:1 122:1 123:1 124:1 125:1 126:1 127:1 128:1 129:1 130:1 131:1 132:1 133:1 134:1 135:1 136:1 137:1 138:1 139:1 140:1 141:1 142:1 143:1 144:1 145:1 146:1 147:1 148:1 149:1 150:1 151:1 152:1 153:1 154:1 155:1 156:1 157:1 158:1 159:1 160:1 161:1 162:1 163:1 164:1 165:1 166:1 167:1 168:1 169:1 170:1 171:1 172:1 173:1 174:1 175:1 176:1 177:1 178:1 179:1 180:1 181:1 182:1 183:1 184:1 185:1 186:1 187:1 188:1 189:1 190:1 191:1 192:1 193:1 194:1 195:1 196:1 197:1 198:1 199:1 200:1 201:1 202:1 203:1 204:1 205:1 206:1 207:1 208:1 209:1 210:1 211:1 212:1 213:1 214:1 215:1 216:1 217:1 218:1 219:1 220:1 221:1 222:1 223:1 224:1 225:1 226:1 227:1 228:1 229:1 230:1 231:1 232:1 233:1 234:1 235:1 236:1 237:1 238:1 239:1 240:1 241:1 242:1 243:1 244:1 245:1 246:1 247:1 248:1 249:1 250:1 251:1 252:1 253:1 254:1 255:1 256:1 257:1 258:1 259:1 260:1 261:1	262:1 263:1 264:1 265:1 266:1 267:1 268:1 269:1 270:1 271:1 272:1 273:1 274:1 275:1 276:1 277:1 278:1 279:1 280:1 281:1 282:1 283:1 284:1 285:1 286:1 287:1 288:1 289:1 290:1 291:1 HNATT (2) 3:21 154:16 hold (4) 68:8 75:22 144:10 233:19 holding (2) 10:14 131:3 holdings (7) 1:8 4:24 6:11 10:10 10:25 49:19 51:20 home (3) 159:20,23 279:2 HOMMEL (1) 4:23 hooray (3) 216:5,15,20 hours (3) 104:22 107:5 215:17 house (2) 258:4,5 HR (3) 20:23,23,24 Hrasca (1) 196:14 Hubbard (2) 4:15 248:6 huddle (1) 142:13 huge (4) 116:3 139:11,13 216:17 Hughes (3) 4:15 248:5 269:25 Hume (44) 3:14 42:19 43:5 44:3 44:24 47:7 48:19 58:7 64:3 68:24 69:18 71:13 73:6 74:9,24 75:16 76:11 78:6 94:11 96:21 98:21 99:4,8,20 113:6 117:13 125:19 162:14 170:22 174:8 186:15 210:11 227:24 230:2 266:15 270:7,15 271:5 273:14 280:25 281:5 284:10 286:14
--	--	--	--	---

289:7 Hume's (2) 285:5,22 Humphrey (2) 16:22 237:10 Hyung (3) 16:22 139:8,9	30:2 38:17 93:18 107:9 108:9 130:14 220:9 258:25 287:4 immediate (2) 78:24 80:3 imperfect (1) 240:17 implemented (1) 117:10 implementing (2) 22:6,9 implications (1) 145:5 implied (1) 27:14 important (17) 17:25 43:16 63:17,20 64:2,8,15,15,18,25 65:10,14 102:15 103:14 143:16 147:25 148:14 imposed (1) 116:23 imprinted (1) 106:12 improve (1) 143:24 improved (1) 168:4 inartful (1) 44:19 include (19) 40:20 48:7,9 62:15 71:10 87:5 92:6 124:23 134:13 180:6,8,10,12,16 201:7 206:9 238:16 252:4 259:2 included (76) 12:7,8 14:9,15,18 36:14,16,16 39:2,4 40:23 44:6 53:24 54:13,16 59:14 63:13 75:6 77:4,5 77:10 92:2 109:7 110:24 118:2,4 119:13 126:21,22 126:23,23,24,25 141:11,16 150:10 151:21 153:11,12 178:24 186:24 187:3 201:12,15 202:19 205:23 208:12 213:12 220:19 221:16 241:21 242:4,10,12 242:18 243:7 244:4 248:15 249:3,12,12 249:14 250:8 251:2 251:18 252:15	253:8 254:4,25 264:25 268:6 269:23 276:16 282:19,24 285:7 includes (4) 247:23 252:25 266:12 284:7 including (9) 32:18 34:23 112:13 159:7 169:14 170:11 223:19 233:21 250:2 inclusion (6) 77:17 92:10 253:17 259:13 260:3 273:12 income (2) 143:15 280:4 increase (3) 191:11 193:7 213:20 increased (3) 142:9,19 143:7 increases (1) 115:11 independent (4) 69:23 172:3 185:4,7 independently (2) 52:13 134:11 INDEX (1) 289:2 indicate (2) 111:23 152:18 indicated (6) 16:24 17:10,23 40:11 92:24 152:14 indicates (1) 112:5 indicating (1) 273:20 individual (8) 28:6 53:12 78:16 132:17 134:20 167:5,12 181:21 individuals (2) 16:16,18 inefficiencies (1) 195:13 infer (1) 205:22 inference (3) 63:22 65:4,6 information (19) 22:10 76:21 91:4 92:22 123:2 129:14 199:4,20 201:10 202:2 222:15 230:21 240:17 259:10,11 260:22 262:9,11 276:12 informed (3)	45:4 211:21 284:13 informing (1) 237:24 infrastructure (1) 9:16 inherent (1) 42:15 initial (3) 16:13 32:20 227:22 initially (2) 24:24 174:13 input (7) 39:12,17,22 102:15 227:11 228:19,20 inputs (1) 214:8 inquiring (1) 215:22 inside (1) 45:5 insists (1) 46:24 insofar (1) 250:22 institutions (3) 28:6 217:17,19 instruct (1) 76:13 instructing (1) 75:19 instruction (3) 72:23 75:25 235:6 instrument (1) 258:10 insure (5) 12:2 121:3 132:25 149:18 201:19 insuring (1) 26:9 integrated (1) 284:16 integrating (2) 9:14 79:21 integration (3) 9:11,13 79:17 intended (1) 138:16 intending (1) 237:13 intense (1) 65:17 interactions (1) 109:11 interest (5) 27:14 30:16 36:7,8 67:11 interested (7) 16:3 39:24 169:17 180:5 216:3 228:22 290:19	interests (5) 32:10 33:9,15,16 34:22 interim (1) 86:22 intern (2) 85:6,16 interns (1) 85:8 interpretation (1) 91:17 interrupted (1) 85:12 introducing (2) 37:2 40:12 inventory (23) 35:22 36:5 37:15 120:15,20 121:17 123:13 124:10,17 124:22 125:6,18,23 210:17 281:22 282:2,5,19,24 283:22 285:9 286:21,25 investigate (3) 250:17 251:4 254:3 investigated (1) 248:14 investigating (3) 149:13 150:22 248:12 investigation (4) 150:8 250:7 252:9 253:12 involve (1) 234:22 involved (64) 13:4 22:24 24:8,9,25 26:8,25 35:6,24 36:12,19 37:13,18 39:4,12,21 40:3 50:21 77:7,8 80:23 86:4 119:10 127:8 127:14 156:12 157:22 158:2 168:25 187:17,18 198:14 205:10 206:19 212:18 220:13 227:20 229:13,17 237:3 244:6,10 245:6,9,11 245:24 246:2,7,8,10 246:13,16,20 247:4 247:6,7,8 269:19,23 270:2 271:9,12 276:5,14 involvement (6) 13:7 22:5 23:7 229:2 262:25 263:3 involving (1) 244:9
--	---	---	--	--

in-house (1) 76:12 issue (18) 7:7 66:23 97:12 99:12 103:19,22 104:6 124:17 194:21 200:24 205:14,20 205:25 207:3 208:16 268:3,12 284:22 issues (18) 6:12 23:22,24 24:10 24:14 121:21,25 123:3 124:21 137:2 139:7 149:16,17 158:22 198:6 206:3 271:22 272:10 ITD (1) 278:13 item (8) 137:24 150:6,7 205:16 250:4 254:2 265:12 285:8 items (16) 109:4 149:17 150:18 157:25 159:8 161:3 185:17 198:6 214:18 224:4,11 249:25 253:12 263:14 272:19 286:3 iterations (4) 47:19 82:23,25 214:6 iterative (7) 80:23,25 81:3 82:15 88:10 93:7 165:3	Johannesburg (2) 7:17,21 John (2) 4:20 14:12 join (3) 26:2 31:23 33:17 joined (4) 8:23 9:7,9 34:12 Jointly (1) 1:8 Jonathan (1) 269:24 Jones (4) 2:10 3:3 6:10 255:7 JP (18) 29:10,16,19 116:5 171:18 190:23 205:22 206:15 207:4 208:21 209:5 209:7 216:6 219:6 219:15 267:5 268:8 279:10 JPM (2) 189:7 205:15 JPMC (1) 220:5 judge (5) 46:9,13 66:22 155:20 196:2 judgment (2) 235:21 244:23 July (1) 10:20 June (2) 11:14,17 junior-level (1) 85:20 jurat (1) 287:5	142:8 180:8 184:23 185:11 188:14 203:24 211:7,16 212:10 214:23,24 257:15 259:21 288:6 kept (7) 12:3 22:12 117:19,19 117:24,24 118:8 key (3) 109:3,6 200:17 kind (5) 122:21 123:22 191:14 251:11 283:19 Kirk (14) 36:16 123:10,17 124:7 142:7 215:16 233:11 247:8,21 275:19 276:8,9,11 knew (15) 32:25 35:5 56:4 75:2 75:6 84:18,22 94:15 94:16 121:14 134:11 157:24 243:2 245:4 274:23 know (316) 6:12 9:24 10:2,3,12 10:24 15:23 19:14 21:6,9,24 24:3,4,11 24:18,21 26:8,9,11 28:20 29:18,23 30:6 31:7 33:23,25 34:12 35:19,21,23 36:6,7 36:10 37:16,16 38:8 38:19 39:14,21,25 40:12,23 41:20 42:6 42:9,10 44:8,9,16 44:17 45:8,18,23 47:22 50:18,19,20 50:22 55:25 59:11 59:24 60:7 64:6,7 64:14,16,21,23 65:3 65:6 66:24 68:3 69:2,11 71:8,9,21 71:23 72:9 73:10,15 73:24 74:3,3,4,12 75:4 77:16 79:2,14 79:17,18 82:21,22 83:9,13 84:16,19 85:25 86:3 90:7 91:12,22,24 92:7,8 92:17,22,22 93:6 94:24 95:2,8 96:2 96:11,25 98:23 99:16 101:7 102:2 103:25 104:19,24 105:2,4,6,8 108:23 109:20 111:7,8,20 113:20 114:15 115:16 118:14	119:12 121:13,22 122:13 123:20 124:6,9 129:3,13 132:7 133:17,19,24 135:7 136:17 137:20 141:20 143:21 144:7 150:13 152:10 154:20 157:12,14 159:13 168:15,21 169:11,23 170:3,14 170:24 171:7,11,17 172:8 174:10,12,18 178:20,25 184:11 186:19 187:8,10,10 187:15,15,25 189:23 190:16 198:3,7,8 199:8,12 200:6 201:22 203:18 204:6 206:13,14,25 207:19 208:14,14 208:20,22,25 209:4 209:6,8,11,14 210:14,23 212:9 216:10,11 218:4,25 219:10,16,20,24,24 220:4,8,22 221:4,8 221:19 222:7,8,11 222:14,16,17 224:3 224:4,5,6,15 226:15 227:5,14,17,18 228:7 229:23 230:14,19 236:9 237:6,12,15 239:2 239:23 240:9 241:3 241:16,23 242:13 242:20 243:17 245:24 246:6,9,13 246:22 248:25 250:16 251:22 254:9,22 256:6,23 257:20 258:4,7,9,17 258:25 260:24 262:12 263:13,18 263:19,20,21 265:8 265:9,12,17,24,25 266:3,4,5,17,19,22 268:18 269:6,18 270:20 271:7,13 275:23 277:3 278:5 278:17 282:15,17 282:20,25 283:4 284:6 286:17,24 knowing (2) 97:15 159:15 knowledge (21) 12:20 15:12 72:15 111:15 141:18 156:2,8 158:3	159:11 160:13 172:3,12 187:22 188:8 232:3 247:9 252:18,23 262:22 265:10,13 knowledgeable (2) 37:19 276:18 known (5) 95:8,13 179:23 265:11,17 knows (2) 72:3 175:15 KRUSE (1) 4:25
<hr/>				
L				
<hr/>				
L (1) 4:13 lacks (15) 44:3,24 48:19 68:24 69:18 74:9 78:6 94:11 96:21 113:6 125:19 162:14 186:15 270:7 271:5 language (2) 123:17 161:25 laptop (3) 84:7,9,14 large (17) 79:19 142:9 163:11 205:9 232:6,8,14 234:21 235:22 236:3,7 237:25 238:15 239:2 268:6 275:16 279:16 largely (1) 211:2 larger (4) 29:5 142:16 166:18 213:16 Larocca (5) 200:6,25 202:3 269:24 280:9 late (2) 197:18 198:24 latest (1) 278:2 law (3) 217:9 246:5 248:5 lawyer (3) 57:16,19 58:8 lawyers (15) 73:9,10 75:18,18 83:12 100:3 111:9 111:10 140:3 156:24 157:13,20 233:15,21 247:6 layman's (3) 25:8 28:12 138:5 LBHI (1)				

10:22 LB1 (27) 10:3,15 16:4,5 24:21 25:3 34:2 41:18 59:20 77:9,12 115:15 116:20,24 117:19,24 118:11 145:24 178:25 210:22 215:6 225:24 255:9,11,22 256:18 272:10 LBIE (1) 10:25 LB1's (1) 268:22 LB745 (1) 51:21 learn (10) 38:24 46:21 48:24 49:2,4 50:6 53:7 59:7 97:11 194:11 learned (9) 38:5 42:6,8 52:17 53:4,6 55:21 75:17 235:13 leave (1) 11:15 led (11) 80:24 82:16,23 92:17 164:14,17,22 187:19 210:9,10,18 Lee (4) 16:22 139:6,9 140:25 left (7) 87:19 101:19 109:21 195:12 212:3 256:7 268:11 leg (1) 28:15 legacy (2) 77:9 236:11 legal (8) 24:11 68:25 71:14 117:14 224:24 270:15,16 271:6 LEH (3) 123:9,14 124:6 Lehman (174) 1:7 3:4 4:24 6:11,14 9:11,15,22,25 10:6 10:10 11:8,10,15 12:15,17 13:2,24 14:3 15:6,13 16:14 20:23,23,24 22:22 24:2,17 26:9 29:13 30:16,20,21 32:3,11 33:3,9,14,16,22,24 34:11 35:4,21 36:4 36:9,12 37:3 38:7 38:20,23 40:3,13,22	44:15,18 49:18,19 50:16 51:20,20 52:18 53:24 54:3 55:10 57:14,16 60:22 61:7 64:24,24 65:5 77:9 79:19 80:15 84:19 85:6,8 85:16,20 91:23,25 92:16 93:2,25 94:19 96:24 97:18 101:15 101:19 102:16 110:4,4 111:10 114:16 115:18 116:6,9 117:11 118:17 124:2 127:9 127:10 131:7 141:11 149:22 159:15 163:7 164:23 170:2 171:23 172:4 177:13 180:22,25 185:25 191:23 192:2,4 205:3,10 206:23 207:5 209:19 212:3 213:2 213:12,25 219:18 220:5,10,16 221:7 223:12,15,18,24 224:2 226:25 227:10 232:11 233:3,4 235:8,14 236:10 239:17,21 240:7 241:12 245:8 246:9 247:11,17 250:21,22 252:20 253:19 256:2,4 259:14 261:6 263:11 267:15,21 268:19 271:15 272:25 273:3,13 274:20 275:23 276:2 291:3 Lehman's (36) 29:22 33:21 41:8,14 41:18,23 43:4 44:11 44:22 53:16,21 72:11 73:12 81:19 82:12 90:4,7 94:3 96:19 97:3 159:3,14 162:12,24 163:24 164:19 166:17 208:11 210:16 227:6 235:3 268:15 269:4,20 270:4,13 Lehman-Barclays-... 190:20 lend (1) 27:24 lender (1) 47:23	length (1) 264:3 lent (1) 159:12 letter (8) 34:25 55:4,5,9,12,15 55:19,22 letters (1) 255:13 let's (11) 35:9 40:14 48:23 70:11 75:23 102:3 142:13 154:20 158:14 216:21 231:16 level (11) 63:19 129:12,15,18 129:21 130:7 132:16,17 133:2 163:5 196:17 leverage (1) 95:12 liabilities (39) 40:2,7 53:8,11,13 80:15 87:22 96:20 97:14 143:21 211:6 213:21 214:3 224:21 225:2,21,22 226:6,16,24 227:7,8 227:10,16,21 228:4 228:8,10,24 229:4 229:10,12,15,21 230:12,16,22 263:17 270:5 liability (6) 53:12,18 95:17 212:13 225:11 226:2 licenses (1) 8:10 Lieberberg (1) 14:18 life (1) 140:19 lift (1) 181:2 likelihood (1) 160:2 limited (1) 203:25 line (25) 87:6 88:21 114:3 150:11 173:14,20 173:22 175:3 248:9 258:8 265:2 284:2 284:14,15 285:7 286:3,11 287:4 291:10,12,14,16,18 291:20,22 lines (5)	141:25 266:20,21 277:24 286:18 linked (1) 124:15 liquid (3) 29:4,6,23 liquidity (1) 143:24 list (13) 36:14 179:20 180:3,6 180:21,22 181:2 205:15 250:2 251:15,17,18 278:6 listed (20) 149:12 150:21 151:20 208:13 223:6,17 225:10,20 226:4,6 226:16,23 230:11 231:17 248:11 251:23 265:3,5,7 283:19 listing (2) 247:23 283:14 little (11) 25:22 51:6 75:12 130:12 151:10 164:13 195:5 210:24 248:19 275:18 280:19 live (2) 164:8,9 LLC (2) 4:9 51:21 LLP (6) 2:10 3:3,10,16 4:3,15 loan (5) 195:10,16,21,22,23 locate (1) 241:10 located (2) 65:2 239:21 location (1) 147:19 lock-up (36) 59:19 67:8,15,21 68:4 71:12,24 77:6,6 147:3 148:3,6 149:9 150:2,3,7,12,15 152:8 156:21 157:5 157:9,23 160:23 172:23 174:2,17 176:24 189:7 250:3 264:4,22 271:23 280:3,15 285:19 logic (2) 238:14 275:15 logical (3) 132:8 238:7,9 logistics (1) 26:4	London (1) 11:11 long (9) 8:19 11:9 55:14 100:17 226:13 239:15 250:2 252:5 277:11 longer (4) 76:14 116:15 144:5 256:3 look (30) 51:23 54:21 86:14 87:18 88:20 89:14 89:24 104:3 106:3 107:22 110:10 113:22 120:7 127:20,25 163:13 168:16 173:7 184:10 189:2 206:25 225:3 230:7 252:9 253:8 256:8 277:16 278:9 281:6 281:10 looked (14) 44:15 79:12 99:18 129:11 144:15 147:11 162:9 243:24 244:11,20 250:15 253:5 261:2 262:11 looking (36) 6:12 20:11 40:6,6 63:6 66:7 75:10 102:8 107:12,18 118:24 120:23 127:14 147:13 151:2,4 152:19,22 160:12 165:4 170:5 172:18,24 183:8 198:24 203:16 236:14,15 249:16 249:25 255:4 258:14 259:9,11 263:21 273:18 looks (8) 87:3,10,11 89:2 149:9 150:4 261:3 285:12 loop (1) 259:8 loose (1) 244:6 Los (1) 4:6 lost (4) 34:9 191:6,24 195:6 lot (14) 12:5 32:17 65:18 97:2 158:12 171:8 198:11 201:17 202:11 247:15
--	---	---	---	--

255:24 271:22 272:13,19 lots (1) 57:24 low (1) 58:23 lower (5) 91:12 95:19 101:4 123:6 173:11 Lowitt (342) 1:13 2:9 6:1,2,8 7:1 7:14 8:1 9:1 10:1 11:1 12:1,15 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1,12 21:1 22:1 23:1,17 24:1 25:1 26:1 27:1 28:1 29:1 30:1,25 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1,17 52:1 53:1 54:1,17 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1,4 64:1 65:1 66:1 67:1 68:1 69:1 70:1 71:1 72:1 73:1 74:1 75:1 76:1 77:1 78:1 79:1 80:1,6 81:1 82:1 83:1 84:1 85:1 86:1 86:12 87:1 88:1 89:1 90:1 91:1 92:1 93:1 94:1 95:1 96:1 97:1 98:1,3 99:1 100:1 101:1 102:1 103:1 104:1 105:1 106:1 107:1 108:1 109:1 110:1,8 111:1 112:1 113:1 114:1 114:22 115:1 116:1 117:1 118:1 119:1 120:1,5 121:1 122:1 123:1 124:1 125:1 126:1 127:1,7 128:1 128:2 129:1 130:1 131:1 132:1 133:1 133:17 134:1 135:1 135:15 136:1,11 137:1 138:1 139:1 140:1,24 141:1,22 142:1 143:1 144:1 145:1 146:1,13 147:1 148:1,24 149:1 150:1 151:1 152:1 153:1 154:1 154:13 155:1,4 156:1 157:1 158:1	159:1 160:1 161:1 161:21 162:1 163:1 164:1 165:1 166:1 167:1 168:1,17 169:1 170:1 171:1 172:1 173:1,6 174:1 175:1 176:1 177:1 178:1 179:1 180:1 181:1,25 182:1 183:1 184:1,9 185:1 186:1 187:1 188:1 189:1 190:1,5 191:1 192:1 193:1,6 194:1 195:1 196:1,4 197:1 198:1 199:1,25 200:1 201:1 202:1 203:1,11,24 204:1 205:1 206:1 207:1 208:1,2 209:1 210:1 211:1 212:1 213:1 214:1 215:1 216:1 217:1,4 218:1 219:1 220:1 221:1 222:1 223:1 224:1 225:1 226:1 227:1 228:1 229:1 230:1 231:1 232:1 233:1 234:1 235:1 236:1 237:1 238:1 239:1 240:1 241:1 242:1 243:1 244:1 245:1 246:1 247:1 248:1,4 249:1 250:1 251:1 252:1 253:1 254:1 255:1 256:1 257:1,11 258:1 259:1 260:1 260:23 261:1 262:1 263:1 264:1 265:1 266:1 267:1 268:1 269:1 270:1 271:1 272:1,24 273:1 274:1,5 275:1,13 276:1 277:1,17 278:1 279:1 280:1 281:1,6 282:1 283:1 284:1 285:1 286:1 287:1 288:1,5,12 289:1,4 290:1,11 291:1,5,24 Lowitt's (1) 18:15 luck (2) 196:21 198:22 lunch (1) 120:23 Luncheon (1) 119:20 <hr/> M <hr/> M (3)	3:21 258:15,18 mail (4) 189:4 259:3 279:19 280:4 main (2) 63:12 246:5 maintain (1) 95:9 maintained (2) 14:15 193:15 maintaining (4) 12:4 18:18,23 40:14 maintains (1) 29:11 major (1) 218:11 majority (3) 77:11 198:13 219:13 making (4) 77:8 88:8 104:10 232:13 man (4) 12:11 83:17,19 86:5 manage (1) 236:11 managed (2) 285:18,22 management (3) 14:19 169:15 240:7 managers (2) 114:16,16 manner (1) 98:11 margin (7) 101:17,21 252:25 256:3 286:12,18,21 mark (18) 20:12 24:8,9 87:6 91:3,5,6 113:21 128:9 129:21 132:13 137:8 145:19 161:11 162:3 167:20 172:25 273:24 markdown (1) 138:7 marked (63) 30:23 31:2 51:18 52:14 54:18,19 80:7 80:20 82:21 86:11 93:10 97:25 98:4 100:20 101:10 105:25 110:9 120:6 127:18 135:12 136:12 141:23 146:11,14 148:22 148:25 154:14 155:2,5 159:17,18 161:17 167:6,22 168:4,16 173:3,5	181:23 182:2 184:6 184:10 190:2 196:5 199:23 200:2 203:9 203:12 215:12 225:5 235:3,10 254:6 257:6,12 260:12 265:4 266:14 274:3,6 277:14 284:17 289:10 market (22) 24:17 34:5 41:20 42:16 45:25 48:6 88:19 90:8 231:20 231:25 232:9,12,23 233:6,18 234:15,24 235:11 236:2 238:6 239:4,4 marketplace (12) 24:19 28:5,8 29:4 41:7 42:24 43:11 64:22 66:4 94:5 232:16 272:18 markets (5) 36:15 115:8 258:11 274:25 276:18 marking (12) 127:9,10,16 128:4,14 130:6 131:7 145:5 162:2 163:15 169:2 169:5 marks (8) 41:14 43:17 131:18 131:19,24 132:7 138:2 276:2 markup (1) 89:10 marriage (1) 290:18 Marsal (1) 4:25 Martin (32) 13:22 14:10 39:6 96:10 97:23 106:19 107:24 108:15,18 108:23,24 109:11 136:23 139:10,19 139:20,21,23 142:16 184:23 211:16,19 214:17 214:19,22,23,23,24 215:2,7 259:23 260:7 Martin's (1) 120:16 Mary (4) 1:18 2:11 290:7,23 Master's (1) 7:23 match (8)	39:25 227:21 228:4,8 228:10,24 229:3,11 matchbook (6) 142:15 143:19,20,23 144:2,4 matchbook's (1) 144:9 matched (1) 143:22 matching (3) 229:14,19 230:16 materials (4) 99:17,24 100:2,4 math (2) 78:10 151:8 matter (12) 23:15 65:3,4,6 123:12 140:14 146:21 147:21 148:8 181:6 181:14 290:19 matters (1) 258:21 maturing (1) 210:24 McDade (45) 14:2 15:16,24 16:10 17:3 22:12 35:13 61:20,24 62:5,9,16 69:6,15 102:18,25 103:17,18,22 104:6 105:2 123:22 149:6 149:15 155:6,12,21 156:19 158:16 159:19,23 160:14 197:6,8 211:21 212:2,9 215:16 216:5 231:2 247:20 249:20 265:20 274:10 276:9 McGee (4) 16:23,24 24:9 39:3 mean (69) 18:22 22:9,14 25:8 33:25 34:11 36:23 37:4 45:2 48:21 50:9 53:9,17 56:5 60:13,17 63:19 66:3 79:7 80:21 81:3 91:24 96:6 98:24 100:16 106:7 117:18 127:13 128:12 132:19 134:11 138:21 140:15 144:3,22 146:2,23 152:6 156:4 157:24 165:21 166:8,13 170:3,13,19,20 172:6 193:7,8 194:6 198:11 204:8
--	---	--	---	---

215:24 223:14 225:2 228:7 232:2 243:12 245:15 250:14 254:22 255:4 258:9 259:9 272:16 274:8 283:22 285:13 meaning (1) 150:17 means (12) 21:2 31:11 74:4 101:16 130:17 135:18 144:5,6,24 178:6 207:2 268:18 meant (20) 27:19 89:18,19 128:9 140:22 141:18,20 146:24 162:3 170:4 176:25 177:4,6,12 177:23 225:21 251:8 274:16 280:12 285:20 mechanics (1) 27:2 mechanism (2) 29:7,12 meet (9) 35:20 36:3,20,21 120:15 123:10 124:2,7 176:20 meeting (31) 13:17,19 17:20 26:3 36:25 37:21 40:11 49:18,22 50:5 61:8 61:9 66:21 86:8 102:25 103:5 115:19 123:17,20 139:6 140:3 153:8 196:2,18,20,20 197:5,8,20,24 198:8 meetings (14) 13:11 36:24 37:14,18 52:2,4 112:17 114:15 198:4,10,12 198:13,17,20 memorialized (2) 56:7,10 memory (1) 42:8 men (1) 198:22 mentioned (2) 59:2 267:12 merely (1) 244:8 Merton (1) 8:6 message (1) 136:21 met (13)	6:9 13:22 17:18 36:8 36:10,23 37:23 44:14 61:12,13 86:5 117:4 152:5 metadata (3) 98:13,22,22 Michael (2) 136:22 258:2 middle (2) 256:9 280:7 midnight (1) 104:23 Mike (3) 16:21 36:14 139:8 million (21) 18:13 32:14,15,21 33:12 60:9 78:3 125:15 177:8 189:24 204:2 207:21,24,24 255:10 258:16 264:23 285:14,17 286:4,7 millions (2) 258:18,19 mind (7) 54:15 76:16 97:9 124:21 161:11 236:24 257:8 mine (3) 154:19 181:12 203:20 minute (4) 173:23 176:23 218:15 225:16 minutes (5) 90:17 207:10 274:11 274:17 275:2 mischaracterizes (7) 78:15 94:21 138:10 174:7 175:25 213:4 227:24 misrepresents (1) 31:22 mix (1) 131:18 mixed (1) 125:16 mixing (1) 78:19 moment (7) 27:18 82:14 144:16 161:24 254:7 257:18 263:8 Monday (30) 8:23 15:17,22,25 35:11,14,18,19 36:22 40:8 46:11 59:16 69:3 74:22,23 75:14 79:25 80:12 80:17 83:7,8 108:19	109:25 122:18 197:9 212:6 215:2 215:18 220:21 278:20 money (11) 31:15,20 34:16,18 146:22,23 149:8,18 174:3,17 278:6 Monty (2) 196:12,19 Morgan (18) 29:10,16,19 116:5 171:18 190:23 205:22 206:15 207:4 208:21 209:5 209:7 216:6 219:6 219:15 267:5 268:8 279:10 morning (43) 6:8 15:18 17:19 38:9 38:11 42:7 46:11,20 48:24 49:11,14,16 49:20 80:12 81:8 83:5 102:7,21,24 103:2 104:18,22 107:5,16 109:10 123:8,18 124:8 139:7 142:14 148:10 158:16 159:24 160:9 197:9 197:15 204:21 212:7 214:10 215:3 215:17 222:24 230:20 mortgage (3) 92:3 109:13,13 mortgages (5) 109:19 165:9,18,19 287:2 mortgage-backed (2) 220:14 221:6 move (21) 116:3,4,4 169:21 171:13,16 176:23 178:5 182:14 187:6 187:9,11,12,23 204:5,7 217:14 274:21 278:17,19 279:14 moved (2) 187:7 219:3 movement (8) 67:10 171:9 175:8 186:21 190:23 220:11 267:5 279:10 movements (4) 26:10,10 169:18 272:10 moving (9)	27:2 69:4 169:17 171:20 172:7 185:10 190:17 219:23 279:16 multipage (1) 98:5 multiple (1) 284:18 muni (1) 114:7 murder (1) 113:25 mutate (1) 73:21 mutated (2) 73:19 74:5 <hr/> N <hr/> N (1) 4:11 Nagpal (1) 16:22 name (8) 6:8 37:8 83:13 180:13 184:20 248:4 291:3 291:5 named (1) 21:7 names (3) 36:6 246:18 276:17 Nancy (3) 278:12,24 279:13 narrative (1) 58:20 naturally (1) 286:22 nature (3) 24:13 92:8 132:7 Neal (1) 196:13 necessarily (2) 211:3 264:20 necessary (4) 60:16 115:5 129:16 166:2 necessity (1) 101:13 need (37) 7:5,9 19:9 32:21 51:6 58:4 68:8 89:24 90:16 99:12 132:7 132:12 137:6 142:15 143:19 144:3,25 146:21 147:3 150:13 156:23 166:22 167:9,11,12 176:12 188:19 196:17,19 207:9 215:3,7 278:4 278:5 279:24,24	280:20 needed (48) 11:22 24:22 27:25 32:17 56:15 60:21 60:22 61:7 62:18,21 63:19 65:24 67:9,12 67:19 68:16,22 69:3 69:9 95:10,11 96:19 97:21 104:3 116:13 129:21 131:22 132:15 139:15 156:9 167:2 171:21 172:9 182:21 195:20 198:7 199:20 200:24 231:7,12 245:22 253:8 254:2 262:8 271:21 274:24 278:19 280:21 needing (1) 157:4 needs (3) 145:2 175:13 279:3 negotiable (2) 275:24,25 negotiate (3) 17:13 92:16 276:22 negotiated (10) 96:8 176:21 213:11 224:3 237:16,16 238:23 240:7 247:4 271:17 negotiating (11) 22:5,7 38:18 45:5,7,9 118:19 188:2 238:25 271:12 273:5 negotiation (11) 22:11 24:8 26:17,24 35:6 44:17 71:17 92:14 93:4 226:24 276:15 negotiations (14) 22:13 26:15 35:9,14 92:21 128:25 129:4 216:2 220:17 227:18 236:13 237:4,20 276:6 negotiators (2) 228:13,14 Neil (3) 4:19 83:25 248:5 Neilson (1) 258:2 net (1) 80:14 never (3) 76:2 204:14 252:19 new (26) 1:3,14,14 2:11,11,14
---	---	--	--	---

<p>3:6,6 4:18,18 62:15 64:16,18 116:18 117:7 119:4,5 136:3 167:18 168:3 171:19 201:25 219:18 290:4,6,10 night (26) 39:8 40:8 80:12 103:6 108:10 120:14,19 131:15 169:13 185:18 191:11 195:21 197:5,14,18 197:19 198:25 212:6 215:3 228:19 278:5,6 279:3 280:11,13,16 night's (1) 131:17 night/Tuesday (1) 46:11 nine (2) 186:18 241:22 nod (1) 7:2 non-actionable (2) 185:22 186:9 normally (2) 144:13 195:12 Notary (2) 2:13 290:9 notations (1) 88:9 note (5) 106:17 128:14 133:23 147:22 184:17 noted (2) 10:16 288:9 notes (2) 95:16 228:17 notice (1) 229:18 noticed (1) 230:15 notion (1) 234:20 numbed (2) 203:9 289:20 number (73) 23:24 35:20 38:8 39:20 40:2 45:13,15 45:16,19 47:17,18 62:17 68:13 79:19 81:25 82:22 89:5,6 89:19,21 92:12,12 92:14,18,19 96:8,9 98:5 101:4 112:12 112:13 122:9,20,21 125:10,11 142:9,13 142:25 144:10,11 151:4 159:6 165:9</p>	<p>179:20 180:4 193:10 205:9 207:23 211:16,22 212:2 213:11,16,19 214:5,7,14,14,15,20 214:23 224:8 226:19 229:20 231:15 234:12 268:7 270:23 280:6 281:19 283:22 284:5 numbering (2) 168:6,12 numbers (23) 19:19 32:24 82:7 87:15,17 93:15 96:3 96:6 99:14 108:25 116:13 125:9 191:6 195:6 214:11,13 225:20 226:15,23 230:10 231:16 282:21 285:16 NW (2) 3:12,18 <hr/>O<hr/>oath (1) 5:18 object (4) 76:13 174:8 229:5 283:21 objection (67) 23:9 30:17 31:21 42:19 43:5 44:3,24 45:20 47:7,11 48:19 56:17 64:3 65:20 68:24 69:18 71:13 74:7,9 75:16 78:6 78:14 82:4 94:11,20 96:4,21 98:19 101:24 103:12 105:11,18 108:21 113:6 117:13 125:19 126:18 132:23 134:7,25 138:9 146:5 154:9 162:14 163:2 170:22 174:6 176:6 178:2 181:9 186:15 202:21 210:11 213:3 218:8 224:23 227:24 228:5 230:2 238:20 240:13 261:24 266:15 270:7,15 271:5 286:14 objections (3) 5:10 105:23 244:15 objective (1) 34:2</p>	<p>obligations (5) 32:10 33:8 159:4 256:5 268:20 obtain (1) 21:18 obtained (1) 76:21 obviously (21) 23:16 35:5 39:22 41:25 64:14,22 68:19 79:16 86:3 91:12 103:14 116:7 118:11 120:10 127:4 148:6 149:17 156:25 216:2 250:4 273:14 OCC (10) 255:8,14,23,25 256:3 256:19,21 267:9 286:19,22 occasion (1) 159:9 occasionally (1) 139:25 occur (2) 15:15 33:17 occurring (5) 96:24 118:21 119:8 156:6 219:5 occurs (1) 196:2 October (1) 10:20 offer (16) 31:8,23 32:7,13 34:25 41:5 42:14 43:9 46:3 177:7 178:21 178:23,25 218:5 234:22 273:17 offered (1) 89:4 offering (1) 218:7 offers (3) 77:8 217:13,15 office (5) 61:9,10 120:16 247:13,18 officer (7) 5:17 8:16 10:21,23 11:5,18,21 offices (6) 2:10 158:21 160:10 198:8 221:20,22 official (1) 217:7 Off-the-record (1) 9:5 Oh (1) 33:22</p>	<p>OK (30) 15:21 25:22 32:5 51:12 70:9 73:2 83:8 102:3 136:19 140:23 149:9 154:23 168:3 169:9 183:6 184:15 192:8 197:23 203:7 226:11 233:23 247:24 252:23 254:5 257:3 262:15 266:23 277:7 280:17 288:3 Okay (1) 7:12 OLIVER (1) 4:3 once (1) 161:2 ones (6) 39:24 87:18 92:4 136:8 141:8,9 one-page (2) 162:10 173:6 one-year (1) 18:8 ongoing (4) 115:14 187:16 199:18 267:23 open (3) 136:25 205:16 262:4 opened (1) 274:25 opening (11) 184:25 185:6 261:12 261:18,23 262:7,13 262:19,25 263:25 265:4 operate (5) 28:5 33:25 94:19 95:4 149:19 operates (1) 238:7 operating (2) 8:16 61:11 operation (2) 12:12 169:25 operational (3) 136:5 159:14 219:21 operationalize (7) 67:9,20 68:17,20 69:7 69:14 234:7 operationalizing (2) 121:25 183:3 operations (9) 14:17 168:24 169:11 170:5 220:10 244:9 244:11,22 268:24 opinion (1) 227:7</p>	<p>opportunity (1) 33:17 opposed (4) 69:7 92:18 114:13 140:18 options (32) 149:13 150:21 151:20 248:11 249:2,17,19 250:6,18,22 251:8 251:12,16,22 252:3 252:4,5,10,11,19,25 253:18 264:25 265:3,24 266:6,13 266:18 283:6,17 284:4,9 orchestrated (2) 278:18 279:2 order (5) 18:25 19:6 48:2 239:8 280:22 orderly (2) 34:3,4 organization (3) 14:9 17:25 23:25 organizations (1) 159:7 organized (1) 174:24 original (4) 48:15 138:16 234:13 279:16 ought (2) 144:15 244:17 outcome (1) 290:19 outstanding (3) 193:3 217:13,15 overall (3) 75:13 89:25 90:2 overconcentrated (1) 113:19 overlap (2) 125:17 200:18 overlapped (2) 125:3 201:2 overnight (1) 108:19 owned (2) 250:22 256:18 Oxford (20) 4:19 7:25 8:4,5,8 84:2 248:3,5 257:3 260:9 260:21 273:24 275:5 277:7 281:7 281:11 283:3 285:3 288:3 289:6 o'clock (1) 274:24 O'Connor (1) 14:16</p>
---	--	---	--	--

O'Meara (4) 120:13 123:8 203:24 257:15	22:18 29:11,15 30:14 33:23 39:15 39:19 40:10,13 45:3 47:16 49:6 52:2 53:8 59:15 60:15 66:25 67:10 68:18 68:22 86:16,23 87:3 87:5 88:9 93:3,22 101:12 105:6,20 106:7 108:12 109:25 118:9,18,20 120:22 122:15 124:11 125:24 127:4,5 135:11,24 136:3 145:21 148:9 150:8 151:21 155:9 155:22 161:6 179:2 187:25 191:5 192:17 198:13 202:24 203:18 206:11,15 207:13 210:2,4 212:21 218:19,23 219:17 219:19 220:15,17 221:2,7 223:3 224:20 228:20 229:8 240:23 241:4 241:6 242:21 248:9 248:15,20,21 249:5 249:9,13,21 259:10 269:5 273:4	26:20 210:5,16 party (15) 12:24 42:10 59:22 65:7 71:17 74:15 93:5 96:23 115:15 118:19 227:2,18 236:12 268:2 269:21 Paul (1) 39:3 pay (42) 28:15 31:14,19 42:22 43:21,23 44:12 72:12 73:13 75:15 82:8 90:3,6,12 92:24 94:6 96:16 97:4 128:18 132:2 132:14 162:12,25 163:7,10,21 164:5 164:20 165:13 166:18 208:10 209:14,18 213:21 231:18 232:12,15 233:5 235:9,16,19 235:21 payables (1) 96:12 paying (6) 27:9,10 81:23 91:11 139:17 165:12 payment (12) 18:5 32:18,20 95:18 95:21 96:9 109:2 211:19 212:6,17 214:18 263:18 payments (2) 18:8 19:15 PC (2) 84:8,10 Pearn (6) 254:15,20 255:6,19 255:21 258:3 pending (1) 7:6 people (69) 12:6 13:2,2,16,17,19 21:7 23:24 24:7,21 25:10 26:2 35:4 36:13,21 37:3,3,11 37:13,21 39:20 64:14 79:19,21 112:13,13 115:20 119:10,12 120:10 140:6 143:3,15 153:13 159:9 168:23 172:9 179:21 180:4,23 191:25 197:5 198:14 202:11,16 202:25 203:6 205:9	219:25 220:10 226:19 232:25 241:11,15 244:22 245:4 246:6,23 247:3,11 268:10,11 268:24 269:22 271:21 276:5 278:4 279:14 284:16 percent (6) 18:6,10,12 19:18 110:2,3 percentage (4) 45:12,15 90:12,15 percentages (1) 110:5 performing (1) 149:21 performs (1) 149:20 period (16) 13:5,20 19:4 35:11 67:17,23 72:20,24 76:10 80:18 99:24 174:11 175:10 201:22 257:2 259:19 person (11) 37:6,8 61:24 63:12 83:14,16 153:22 157:24 160:6 180:13 276:12 personal (1) 178:14 personally (5) 229:3,13 241:16,23 246:23 personnel (4) 23:23 85:21 127:8,14 persons (1) 14:4 perspective (4) 80:15 145:3,4,7 pest (1) 14:20 PHILIP (1) 4:25 philosophy (1) 8:2 phone (3) 61:8 160:6,9 phrase (3) 252:3 267:9 283:7 phrasing (1) 25:7 physical (1) 243:13 pick (1) 165:8 picked (4) 112:15,21,25 113:3	picking (1) 113:13 piece (8) 27:23 54:15 67:21 80:24 110:19 131:2 169:7,8 pieces (4) 122:25 223:7 244:7 262:10 pile (1) 161:22 piles (1) 153:11 place (37) 12:21 13:12 15:7 23:5 26:5,11,23 38:21 46:14 48:9 58:18 67:23,25 92:21 102:16 103:6 114:15 117:2,2,7 136:2 151:23 169:8 169:21 171:13 172:8 181:20 195:25 203:21 210:18 225:18 233:25 234:6 245:22 251:3 253:7 272:14 places (1) 151:4 plan (1) 188:3 planned (2) 94:9 145:11 planning (2) 94:14,18 plate (1) 197:4 plausible (1) 282:22 play (2) 13:6 80:19 played (2) 22:10 247:11 playing (3) 27:3,8,9 plays (1) 47:5 Plaza (1) 4:17 please (18) 6:25 7:3 58:13 76:17 119:18 127:25 139:6 155:13 161:22 172:25 182:12 183:25 184:11 190:5 200:15 207:6 251:9 266:10 pledge (1)
---	---	---	--	--

<p>147:5 pledged (6) 149:18 218:18,23 219:8,19 220:6 plug (1) 214:13 plus (2) 188:3 193:9 point (53) 13:3 15:13 17:18 19:21 20:17 28:21 30:21 33:3 35:11 36:21 38:11 41:7 46:12 50:23,24 67:8 89:3 92:11 104:13 122:14 140:19 148:4 150:5 151:15 151:18 152:3,13 155:23 156:3 158:13 171:23 172:6,13 176:18 179:14 186:25 194:16 200:17 208:22,25 211:25 217:24 218:13 230:21 238:4,10 242:3 243:4,6 249:8 256:2 268:10 275:24 points (2) 173:14 216:16 politics (1) 8:2 portfolio (1) 114:20 portion (3) 121:16 137:12 189:20 position (35) 8:19 9:6,8,17,18 10:12 11:2,4,7 25:3 25:21 37:7 71:19 73:23 74:14 89:10 92:4 93:21 95:5 116:15,20 118:13 142:24 143:9,16,25 181:7 191:19,21 194:23,24 206:11 206:13 256:4 262:21 positions (33) 34:13 68:10 113:18 127:9,10,16 128:5 128:10,14,24 129:21 130:7 162:2 162:4 163:14 165:10 166:24 167:5,13 225:24 226:12,14,20 227:13,16 232:19 236:12 258:14</p>	<p>268:15 269:20 270:4,6,21 possession (4) 121:14,21 204:17 239:5 possibility (1) 181:18 possible (15) 49:25 79:19 83:25 85:6,7,18 91:14 100:16 103:5 182:13 266:20 282:14 283:18 284:7 285:6 possibly (1) 34:11 post (6) 33:25 64:16,19 66:2 82:7 99:25 posted (3) 149:22 256:18 272:20 posting (1) 256:3 potential (5) 12:17 60:14 250:5 251:15 253:6 potentially (4) 16:3 34:18 180:23 252:16 power (1) 238:25 PPE (1) 8:2 precise (10) 23:3 49:14 85:17 130:11 154:4 199:11 222:5 229:16 233:7 250:12 precisely (11) 38:17 61:12 80:21 92:8 170:3 222:8 237:18 251:5,14 270:20 286:17 premises (4) 39:8 85:9,21 86:2 preparation (8) 66:25 86:19,23 106:15 107:13 136:15 142:5 155:10 prepare (8) 52:5,12 70:13 185:5 196:20 282:15,16 282:25 prepared (3) 97:12 211:15 218:5 preparing (2) 99:18 127:23 present (10)</p>	<p>4:22 32:2 61:14,17 62:4,7 205:11 221:23 222:3 267:18 presentation (5) 196:23 221:10,14,24 221:25 presented (8) 35:2 50:10,14 71:19 73:17 74:2,13 245:18 Preserve (1) 75:20 resident (2) 14:3 160:4 press (1) 51:6 pressing (1) 243:6 presume (1) 140:15 pretty (1) 64:21 prevailed (1) 28:7 prevailing (1) 235:11 previous (5) 74:11 86:11 124:12 244:19 278:13 previously (10) 54:18,19 120:6 136:12 141:23 181:3 196:5 201:24 215:12 254:6 price (36) 41:4 42:22 44:22 45:11 88:15 90:2,8 91:10,12,23 93:21 128:18 131:25 132:6,20 134:6,23 135:5,7,11 137:10 138:15,19 145:15 146:3 162:11 163:9 164:16 165:13 166:17 208:10 231:18,23 232:22 233:4,16 priced (3) 41:19 165:18 210:9 prices (11) 42:3 129:7,9 166:4 232:17 235:2,3,11 235:20 275:22 279:18 pricing (11) 26:24 29:12,15,16,19 29:24,25 42:5 134:19 234:12 235:15</p>	<p>primarily (1) 254:8 principal (1) 276:13 prior (24) 9:21 15:7 23:6 51:18 54:12 80:7 81:2 85:11 86:6,8 106:2 110:9 123:23 126:9 127:18 179:4 180:22 217:25 221:11 227:25 235:14 236:9 243:18 260:16 priority (4) 139:11,13 142:13 182:10 privilege (6) 7:7 57:17,20,23 58:9 75:21 probably (19) 6:12 55:17 61:13 63:14 71:3 76:24 82:13 113:24 139:10 149:23 170:7 192:11 199:11 217:23 220:2 227:10 269:24 278:17 283:25 problem (7) 76:7,10 137:9 144:21 145:6 164:8 194:19 proceed (1) 171:10 proceeded (2) 58:20 167:3 proceeding (3) 21:11 93:7 216:2 proceeds (2) 48:13,17 process (35) 18:16,17 41:25 42:4 44:10,23 84:24 91:19 92:17 93:8,14 116:8 129:17 130:6 131:7 132:15 164:18 169:19,21 171:12,20,21,24 172:4,5 191:12 193:8 215:8 231:3 239:16 245:22,25 246:2 262:10 276:23 processed (1) 279:22 processes (1) 159:14 produced (4) 98:12 99:2,11 278:8</p>	<p>product (8) 11:23 14:10 37:17 80:23,25 81:4 82:16 86:22 production (3) 99:2,5 284:15 professional (6) 2:12 8:10 148:18 175:21 176:4 290:8 progress (1) 104:9 project (15) 105:6,9,16 120:22 147:6 148:18 169:6 172:17,19 175:19 181:5,8,15 197:4 202:16 promise (3) 274:5 275:10 277:11 proof (1) 147:3 property (1) 126:3 prospects (1) 33:21 protect (5) 27:24 30:15 32:10 33:9 47:24 proven (1) 174:22 provide (5) 224:8 262:8,12 288:7 288:8 provided (4) 29:16 215:10 240:6 255:8 providing (2) 22:10 24:11 Public (2) 2:13 290:9 pull (1) 208:3 pulled (1) 265:8 pulling (1) 191:25 purchase (54) 40:21 41:2,5 42:11,15 42:21,23 43:10 46:3 51:19 55:3 56:2 88:15,16,18,19 93:22 94:4 110:21 111:6,7,17 112:2,8 112:10,23,24 113:4 113:9,17 114:13,18 114:21 127:15 128:23 129:23 130:8 134:19 135:13 138:3 141:9 163:9,19 216:7</p>
--	--	---	---	--

231:19,24 232:14 232:23 233:6,18 234:14 235:7,25 236:14 purchased (3) 6:14 200:19 237:13 purchaser (1) 28:15 purchases (1) 163:11 purchasing (6) 39:24 91:10 93:20 129:8 131:24 232:8 pure (2) 33:23 145:7 purpose (5) 127:11 167:6 168:11 203:5 282:24 purposeful (1) 229:25 purposes (4) 119:6 127:17 202:15 252:6 pursue (1) 252:14 push (1) 151:10 put (39) 28:12 30:25 37:8 46:15 51:17 65:19 86:10 89:12 95:21 95:22 98:3,11,13,22 99:14 102:4 110:8 116:25 117:2,7 120:5 138:5 141:13 164:16 167:11 177:15 178:9 181:25 190:4 195:5 196:4 199:25 203:11 208:8,9 210:19 244:14 266:3,3 putting (13) 52:9 54:17 105:25 136:11 157:13 167:6 184:9 197:4 202:11 225:8 233:14,20 234:15 p.m (26) 111:24 120:3 128:3 131:13 132:4 147:22 155:12 159:21 182:8 184:6 190:12 196:15 197:19 199:23 200:10 254:19 257:6 260:12 263:5 278:14 280:9 288:9 289:18,20,22,23	Q qualify (1) 83:19 quality (3) 113:4,14 209:9 quantified (1) 122:22 quantities (1) 236:10 quantity (2) 235:8,22 quarter (5) 211:12 212:11 214:16 236:10 237:21 question (58) 5:11 7:6,8 33:5,6 44:19 52:8 54:21 57:23 58:13 63:23 63:24 67:14 69:5 70:4,5 73:8 75:12 76:16,20 89:12,14 92:12 97:8 99:13,23 110:22 111:4,19 117:15,16 119:7 125:2 131:4 145:19 152:3 160:21 164:17 165:16 174:9 192:18,21 194:9 213:6 227:3 229:6,8 251:21 259:25 276:4,20 277:8 283:5,15 285:4,5,19,23 questions (22) 24:10 136:5 144:19 158:21 159:2,9,16 160:20 184:16 205:6 216:20 225:8 239:14 247:25 255:15 267:14 270:11 275:6,14 280:19 284:11 288:4 quick (4) 51:12,14 183:25 207:6 quickly (2) 238:24 281:2 Quinn (2) 4:3 217:9 quite (6) 23:23 34:7 51:10 70:25 191:20 282:22	210:2,4 raise (1) 179:10 raised (1) 277:9 raising (1) 179:12 ran (1) 14:19 range (2) 172:23 177:20 rapidly (1) 191:20 rate (1) 27:14 rates (3) 36:7,8 141:16 ratios (1) 95:12 raw (3) 45:13 89:19,20 reached (12) 38:6,10,13,16,25 59:4 59:9 60:8 110:2 151:16,18 202:5 read (23) 52:7 56:21 76:18 117:17 128:16 133:11 134:5,9 145:13 157:10 163:17 164:10,11 184:17 188:22,25 189:3,4 204:15 254:11 257:18 277:19 288:6 reading (4) 137:19 189:10 255:6 279:20 reads (1) 156:20 ready (3) 67:13 182:14 260:24 real (3) 212:13 260:19 266:5 realize (4) 28:2 67:25 239:8 240:16 really (16) 34:17 48:14 67:18 73:23,25 88:13 91:7 113:12 117:22 125:21 199:6 244:13,16 252:13 256:25 280:4 realtime (3) 2:13 170:17 290:8 reason (22) 43:12 47:2 67:23 98:15 108:9 140:8 154:5,7 232:21	235:2 254:25 276:7 276:11,16 291:6,10 291:12,14,16,18,20 291:22 reasonably (1) 83:17 reasons (5) 82:10 114:20 115:13 115:24 177:20 recalculated (2) 169:12,25 recall (133) 10:10 11:12 17:4 30:12 37:4,9 38:3 38:17 49:5,21 50:12 51:3,5,7,8,9 52:15 52:22 56:11 57:6 58:15,23 59:5 60:3 61:4,12 62:6,24 64:5,13 65:11 67:4 80:21 82:16,19 86:8 86:21,23 88:8 89:3 91:15 92:2 96:10 97:15,22 98:9 102:13 104:8 110:5 110:13 112:15 115:9 120:19 123:19 127:21 136:14 146:16,18 146:24 148:20 149:3 152:21,23,25 153:2,22 155:8 168:17 172:16 173:9 175:22,23 176:9 178:16 179:8 179:12 182:4 183:17 185:8 190:5 190:7 191:17 192:20 197:2,3,4,8 203:14 204:19 211:23,25 212:5,8 212:16,21 215:8,15 215:20,21 218:20 221:13,15 223:3,5 223:22 229:2 231:9 231:20 232:24 233:13 236:4 237:18 239:18 250:16,25 251:14 253:14,25 255:4 256:20 259:20,22 263:3 268:5 269:10 273:10,23 275:20 277:22 282:8,12 283:11,13 receivable (1) 188:19 receive (4) 32:18 47:24 180:23 223:24	received (21) 48:9 115:10 116:16 138:20,23,25 167:23 169:13 170:2,9,16 180:24 222:14 223:8 224:2 224:6,13,15,20 234:4 245:8 receiving (1) 27:5 recess (8) 51:15 90:20 119:20 161:19 184:4 207:11 239:12 257:10 recognize (13) 31:2 33:13 80:10 87:14 120:8,9 146:15 149:2 186:4 254:12 257:23 261:14,15 recognized (3) 82:2,6 245:4 recollection (142) 13:22 16:21 17:22 21:4,20,22,25 38:22 39:2 45:14,17 49:15 49:23,25 50:2,4 55:13,16 57:9,11 58:22 62:11,19 64:20 69:23 70:20 71:5 77:23 78:2 83:11 84:14,21 85:3 85:5,15 90:14 91:7 93:12,13,17 98:8 100:15 102:23 103:4,24 105:13,19 105:24 106:22,25 107:3,7,14,19,21 108:6 109:9,10 110:12 112:7 113:15 114:10 117:4 122:6 123:24 137:18 142:4 144:23 145:18 151:7,12,13 153:9 154:2,7 155:17 157:15,17,19,21 158:18 159:25 160:5,18,25 161:5 168:19 176:15 182:20 184:13 185:5,8 186:19,22 188:11 189:16,18 194:14 196:9 197:7 199:12 200:4,23 201:4 205:19,21 211:18 214:21,25 216:14 222:5 223:9 229:16 230:18
	R RACERS (14) 205:15,20,23 206:9 206:11,12 208:12 208:17 209:2,6,9,21			

233:8 234:18 235:5 247:21 248:23,24 250:12,14 253:3,9 253:20 254:13 255:25 256:17 259:12 260:6 263:10 267:19 268:9,23 269:23 270:9 272:5 273:19 274:18 279:4,12 282:9 recollections (2) 119:11 211:20 reconciliations (2) 279:23,25 record (13) 7:3 9:3 27:7 76:18 100:7 106:5 117:17 130:22 131:8 284:12,20 290:14 291:7 recorded (2) 41:15 43:25 records (5) 12:3,5 41:21,23 127:17 recounting (2) 57:12 58:19 recover (1) 28:25 recs (1) 279:21 reduce (1) 232:17 reduced (1) 50:16 reducing (2) 144:9,11 reduction (1) 101:17 Reed (2) 4:15 248:6 refer (9) 28:11 40:18 75:8 103:21 157:3 158:25 177:21 182:18 207:16 reference (21) 76:20 120:12 123:6 132:5 134:5,23 135:4,6 146:3 166:25 173:15,24 175:16 189:5 190:15 197:23 198:23 216:9 258:7 274:16 276:8 referenced (7) 82:13 120:10 121:10 146:4 201:18 206:16 266:13	referencing (1) 134:12 referred (13) 24:6 27:17 109:12 119:7 130:8 133:6 133:14 143:3 162:2 173:19 194:2 219:4 284:3 referring (44) 25:18 100:8 106:10 109:23 121:6 129:19 131:5 133:6 139:19 142:18,23 143:8,18 146:8,9 155:15 157:4 158:24 162:21 164:3 169:24 170:15,24 171:12 174:4 177:11,24 178:7 182:17 191:16 197:25 199:11 204:11,25 205:2 220:19 235:3 236:22 242:9,14 244:8 279:9 280:3,4 refers (7) 147:2 149:17 163:14 171:12 185:14 197:19 242:6 reflect (17) 41:9 42:13 43:16 82:8 88:18 91:21 110:14 132:7,12 138:2 162:23 163:21 204:4 208:10 225:21 245:23 267:6 reflected (18) 42:14 43:9 44:7 81:21 128:19 131:25 132:14 162:10 163:8 225:18 227:6 231:18 235:4 240:22 254:18 263:23 264:17 265:18 reflecting (2) 118:6 132:16 reflection (1) 272:12 reflections (1) 272:7 reflective (1) 233:17 reflects (10) 88:16 90:7 162:22 163:4 164:4 183:7 253:4 255:21 263:10 286:10 refresh (11)	93:11 107:14,18,20 114:10 123:23 151:11 176:15 256:17 259:12 279:4 refreshed (2) 69:24 71:2 refreshes (1) 112:7 refreshing (2) 70:20 71:5 regard (16) 26:17 39:23 45:10 53:5 63:3 91:18 96:25 122:19 172:11 181:21 212:9 235:6,19 250:24 251:6 271:8 region (1) 48:22 Registered (2) 2:12 290:7 regroup (1) 278:19 regularly (1) 22:19 regulatory (4) 68:4 145:3,3,6 Reilly (33) 14:9 37:16 39:6 63:14 66:9 110:16 111:5 111:25 113:25 119:13 128:2,8,13 131:12,20 132:4 133:5,9,24 134:14 136:22 137:2,14 139:5 140:24 142:8 144:20 145:14 180:10 257:14 258:12,24 259:25 Reilly's (1) 134:22 reiterate (2) 234:20 244:19 relate (1) 147:6 related (7) 13:7 48:14 105:8 223:21 224:21 227:16 290:17 relates (1) 89:15 relating (2) 144:9 229:14 relation (2) 212:25 222:23 relationship (1) 226:3 relative (1) 28:7	relay (1) 103:17 release (3) 264:4,22 285:19 released (1) 149:24 relief (2) 216:17 274:13 remain (2) 32:22 145:2 remained (4) 33:3 195:19 199:18 209:7 remaining (4) 32:18 34:13 110:4 249:15 remains (1) 195:25 remember (23) 16:13 55:20 60:25 62:8 122:8,9,10,21 122:22 156:16 198:19 214:22 216:12 217:18 231:4 258:21,22 266:24 267:16 277:18 281:15 283:8,9 remembrances (1) 158:20 reminded (1) 277:10 removed (2) 251:17 252:19 renewed (1) 35:13 repeat (6) 14:23 73:8 74:11 76:17 117:16 261:19 rephrase (4) 23:14 33:5 210:15 213:6 replace (3) 194:19 195:7 224:17 replaced (2) 25:4 225:14 replacement (3) 138:7,12 267:6 reply (1) 274:12 repo (155) 23:4 25:3,4,11,21,24 25:25 26:16,18,18 26:19 27:15 28:16 28:23 29:8,10,17 30:11 46:22,23,25 47:3,5,10,14,20,22 47:25 48:4,10,13,17 64:16,19 66:2 73:20	77:8 78:4 79:13 101:13 114:23 115:4,5,18 116:11 116:15,20,22,25 117:6,7,11,21,21,23 118:10,13,15 119:4 121:8,13,16 125:25 126:5,9,11,14,17,22 126:23 127:3 130:4 130:4 135:20,25 136:2,4,8 137:5,16 137:21 138:6,13,18 143:5 144:7,7,8 145:9,12 167:3,7,12 167:14,14 171:17 171:19 185:18 186:8,13,19 188:9 188:10 190:21,24 191:4,15 192:4,5,6 192:16,19 193:3,8 193:15,20 194:2,12 195:7 201:2,8,12,16 201:20 202:5,19,25 205:23 206:8,9,11 208:19 209:23 210:3,6,19 218:15 219:12,17 223:21 224:17 225:12 233:25 234:2,10 240:23 249:21,24 249:24 256:24 263:16 267:7,7 279:11 282:9 report (4) 13:25 180:14 255:3,5 reported (10) 1:17 12:9 13:18 14:2 37:13 179:15 237:9 262:16,17 271:24 reporter (7) 2:12,13 7:2 14:22 216:21 290:8,9 reporting (2) 149:15 259:3 reports (11) 14:5,7,8,14 37:12,21 57:2 66:16 108:15 180:19 181:17 repos (3) 144:10,12 191:23 represent (5) 98:10 152:11 217:5 248:6 251:3 representatives (3) 159:6 267:24,24 represented (7) 91:11 96:11 136:2 152:9 240:4 264:20 281:20 representing (9)
---	---	--	--	---

72:7,17,19,21,24 73:6 76:6 153:14 268:8 represents (2) 165:13 228:11 repurchase (7) 25:13,16 30:10 218:19,23 224:12 224:20 request (1) 6:16 requested (1) 184:25 requests (1) 24:4 require (4) 52:25 147:13 238:2 238:18 required (1) 224:7 requirement (11) 68:5,19 69:13 142:10 142:19 143:7 167:19 183:23 234:7 271:18 279:14 requirements (1) 176:20 requires (2) 143:12 279:21 rerun (2) 280:18,20 reserve (8) 58:10,10 270:13 272:2 279:21 280:2 280:2 288:6 reserved (1) 5:11 Resi (1) 109:21 residential (4) 109:19 220:14 221:5 236:25 Resis (2) 110:3,23 resisting (2) 205:24 206:4 Resi's (2) 220:23,25 resolution (4) 268:2 270:18 271:2 271:15 resolve (4) 176:24 199:20 200:24 207:4 resolved (6) 67:16 118:16 187:13 187:24 198:7 270:10 respect (10)	25:13 54:20 86:13 93:9 124:16 169:3 176:5 190:19 211:4 285:5 respective (1) 5:6 respond (3) 71:20 108:7 133:9 responding (2) 110:22 131:13 responds (3) 155:21 175:11 191:9 response (5) 141:14 156:18 175:11 274:22 275:13 responsibilities (3) 11:25 22:20 31:25 responsibility (7) 12:5 261:16,20,21 262:4,6,14 responsible (2) 12:2 13:15 rest (1) 32:11 result (13) 15:9 28:3 66:24 73:20 82:18 94:4 148:4,13 166:14 167:18 174:4 209:2 244:3 results (1) 169:16 resume (1) 15:13 retain (2) 179:21,24 retained (1) 118:10 retaining (1) 180:5 return (2) 114:24 167:25 returned (3) 11:11 101:14 121:24 returning (1) 25:11 revenue (1) 79:23 reverse (5) 27:4,15 144:7,11,12 review (10) 70:12 89:13 153:19 165:6 166:15 200:16 254:7 259:6 260:25 263:8 reviewed (5) 52:9 70:19 75:4 133:15,21 reviewing (1) 284:2 Reyda (2)	278:13,24 re-mark (1) 166:24 re-marked (1) 168:6 Ricci (5) 148:10,14 187:17 231:2 269:24 Rich (9) 17:18 36:23 60:14,17 60:18 61:10 102:13 148:14 269:24 Richard (2) 3:20 18:22 Richie (20) 17:18,21 36:23 37:23 60:17,18,18,19 61:2 61:7,15,19 102:7,10 102:19 103:16,17 103:23 104:2,7 right (47) 18:17 25:20 35:10 41:24 46:22 52:11 58:10 70:6 87:17,24 88:3 100:25 102:3,9 104:25 108:15 110:24 124:5,5 134:22 135:2 151:3 157:2 162:6 164:21 170:16 188:17 189:14 190:22 193:12 194:7 197:16,23 198:18 208:19 210:15 241:7,13 243:22 244:14 265:21 266:2,2 276:25 285:20,21 288:6 rights (1) 19:5 right-hand (3) 90:24 95:19 101:4 risk (7) 66:6 79:16,18 115:23 148:18 175:21 176:4 risks (11) 79:6,8,9,12 268:21 269:3,7,13,15,16,19 Robert (13) 3:7 4:13 154:3 175:14 175:16 184:23 222:10 247:19 261:4 262:16,17 278:3,8 role (10) 13:6 14:15 22:7,10 47:5 80:19,22 109:11 218:10,11 roles (1)	247:11 roll (5) 143:4 193:19,25 194:15 195:24 rolling (3) 24:21 25:7 194:11 Romain (1) 261:4 room (10) 38:18 45:5 83:20 84:2 92:20 95:12 153:15 278:13,16,25 rooms (2) 84:11 221:22 roster (1) 36:11 roughly (2) 81:25 188:10 round (1) 116:13 RPR (2) 1:18 290:23 rules (2) 6:23 68:5 run (3) 11:22 279:22 280:22 running (2) 271:22 276:13 runs (3) 190:11 258:4,5 R-E-C-S (1) 279:22 <hr/> S <hr/> Safe (1) 262:24 sake (1) 7:3 sale (7) 28:3 137:10 145:15 145:23 146:3 174:5 236:25 satisfied (2) 169:16 256:5 satisfy (3) 126:8 183:5,23 Saturday (14) 156:20 158:16 159:21 159:24 160:9 174:14 183:6,7 197:14,18,19 198:4 198:25 200:11 save (1) 75:23 saw (9) 30:19 51:8 66:25 86:16 112:8 166:7 281:12 283:4,5 saying (23) 17:6 65:11 94:24	102:13 112:15 131:14 133:9 134:14 135:8 141:6 143:11 150:3 172:2 174:14,21 192:20 216:4 243:23 274:10 279:21,23 282:8 284:2 says (29) 27:7 70:8 87:5,25 101:19,20 106:11 108:3 110:20 124:2 133:11,25 135:3 142:20 143:10 147:3 149:8 150:20 159:20 169:10 188:6,7 200:17 203:20 206:19 248:10 255:7 256:10 283:23 scan (1) 136:16 Schaefer (1) 24:9 schedule (94) 26:23 27:17,19 28:9 28:10 75:3 81:12 88:9 89:6,9,17 91:21 97:12 98:16 100:8 101:18,25 121:12 129:11 153:3,6,10,12,13 154:7 162:9,10,15 162:21,22 167:12 201:6,7,11 208:7,9 211:8,15 212:20,25 221:12,15 222:2,4 222:13,20,21 225:4 225:6,7,9,17 226:17 228:11,11 229:12 230:9,15 240:3,6,20 240:22 241:14,15 241:19,21 242:4,6,7 242:8,10,12,13,18 242:18 243:7 244:4 244:14,25 264:18 264:19 265:9 281:11,14 282:15 282:16 283:11,15 283:20,24 284:6 286:16,19,23 schedules (5) 100:2 121:10 122:24 167:19 200:16 Schiller (2) 3:10 73:3 school (1) 7:15 screening (1) 93:23
---	---	--	---	---

<p>197:16 sealing (1) 5:7 search (12) 126:13 152:24 158:5 181:5 239:14 240:10 241:4,7 243:9,11,18 264:10 searched (2) 241:4 243:19 searching (4) 66:11 152:12 243:8 244:7 seats (1) 216:21 SEC (1) 270:14 second (13) 8:7 9:4 19:17 79:16 99:25 100:10,11 101:3,10 113:23 164:9 190:10 255:11 secondary (1) 7:14 section (2) 156:11 225:11 secure (1) 260:5 secured (3) 24:20,22 143:4 securities (29) 29:21,24 41:15,19,19 90:8 109:13 110:23 112:16 165:17 185:19 189:7 210:8 210:23 220:6,15 221:6 223:21 224:19,22 232:5 236:2,7,25 237:25 238:15 255:11 276:3 281:23 security (4) 28:13 29:6 189:20 255:13 security-by-securit... 165:6 169:2,4 see (125) 32:20 33:7,24 34:20 50:25 52:20,22 56:9 56:11,15,19 70:8 75:23 81:13,15 88:22 89:20 95:19 95:23 97:10 98:15 100:6 106:21 107:25 108:4 109:20 110:17 112:18 114:8 118:24 120:17 123:25 128:10</p>	<p>131:18 132:5,24 133:10,12 134:2,15 134:17,21 135:4 137:12 142:14,20 144:18 145:12 146:19 148:2 154:6 155:24 156:15 157:8 163:19 177:14 178:6 184:17,20,21 185:2 185:3,12,13,20,21 186:2,7 188:20,21 188:23 189:5,10 191:7,13 200:21 204:22 205:17 206:20 211:11 213:22,22 229:21 229:22 230:10,12 230:13 246:14 254:14,16,17 255:16 256:9 258:16,17,18 259:5 261:12 263:5,7 264:14,18 265:2,5 266:11 274:13 278:15,21 281:18 281:19,20,22,23 282:3,6 283:10,14 283:16,22 284:2,4 285:9 286:9,19,20 seeing (24) 51:7,9 86:6,21,23 91:17 92:22 98:8 106:22 110:12,13 127:21 136:14 146:18 156:16 168:17 182:4 184:14 189:15 190:5,7 200:4 277:18,22 seen (39) 34:7 51:25 52:2,5,13 52:15 54:22,24 80:8 86:15,17,18 100:13 100:20,23 101:3,7 106:4 112:2,9 134:5 136:13 142:2 146:17 154:15 155:6,9 173:7 182:3 184:12 196:6 200:3 203:13 204:14 205:7 207:3 215:13 277:20 278:23 Seery (2) 37:7 215:17 segment (1) 114:24 seized (1) 243:15 seizing (1)</p>	<p>182:21 selection (2) 141:10 232:22 sell (16) 28:24 29:3 43:19,20 47:25 79:12,14 94:9 120:15,20 124:14 125:7 232:18 238:24 239:6,7 selling (8) 95:6 121:3 232:6 236:3,7 237:25 238:15 277:2 send (8) 20:16 69:6 105:21 131:17 155:13 197:12 254:21 258:14 sending (4) 132:13 193:5 198:22 215:21 sends (2) 255:7,21 senior (6) 38:20,23 143:14 169:15 218:11 247:6 sense (31) 40:7,14 76:24 77:2,4 80:5 81:8 82:7 93:7 103:10 109:6 110:25 111:3 112:25 114:21 115:24 122:3 124:9 124:20 133:20 157:7 160:19 223:2 223:11 231:11,13 232:4 233:12 238:17 250:23 275:20 sent (15) 21:4 105:9,17 142:2 146:19,20 184:19 190:12 254:15,19 258:24 261:10 263:5,12 277:25 sentence (3) 164:9 229:7 248:9 separate (7) 71:2 124:17,20 167:19 192:5,7 286:10 separately (1) 124:25 September (66) 6:13 8:25 9:7,9 12:14 15:19,22 20:9 32:6 33:10 35:2 41:13 49:20 51:22 55:4 79:25 102:7 106:24</p>	<p>107:5,16 111:24 114:2 123:9,18,23 128:3 129:2 131:13 132:4 133:14 136:24 147:21 155:12 156:20 159:22 162:13 165:5,21 170:17 176:12 182:7 185:10 189:3,6 190:12,20 191:3 193:6 199:22 200:9 203:17 204:21 215:18 225:19 235:14 247:13 253:16 254:16 255:8 261:11 267:13 271:19 272:3 278:14 280:9 289:19 sequence (1) 280:7 series (16) 8:12,12 121:25 122:24 129:6 135:10 149:16 150:24 159:2,18 166:21 184:22 188:24 205:5 267:14 275:14 served (1) 10:17 service (2) 29:11,15 services (1) 224:8 session (2) 45:9 120:2 sessions (2) 45:7 118:19 set (14) 68:5 69:3 92:3 128:4 128:13 139:6 164:3 166:3,4 198:6 203:13 239:3 290:12,21 setting (3) 61:6 227:15,22 settle (1) 67:24 settlement (13) 149:11 150:19 158:22 158:25 159:4 187:13,16,19 209:5 219:4,14 250:3,4 settlements (4) 149:20,21 150:16 253:11 settling (2) 68:4 210:24</p>	<p>seven (6) 16:19,20 21:7,11,14 204:10 shake (1) 7:2 Shapiro (1) 24:8 share (1) 18:3 shared (7) 16:15 17:25 22:17 38:19 153:3,5 221:17 sharing (1) 279:13 sheet (17) 95:10 184:25 185:6 261:12,18,23 262:5 262:7,13,19 263:2,9 263:23,25 265:4,18 291:2 sheets (3) 215:6 266:18 284:17 shift (2) 166:6,9 shoes (9) 46:23 159:4 210:2 218:17 250:21 267:15,20 268:22 269:4 short (13) 7:11 149:10 152:2 207:9 225:24 226:2 226:12,20 227:13 227:16 239:10 252:4 257:8 shorter (1) 144:6 shorthand (3) 28:10 43:15 186:9 show (9) 51:11 69:20 70:2 127:18 130:12 168:3 258:19 263:24 282:20 showed (3) 221:11 278:7 281:7 showing (5) 80:6 106:6 108:13 146:22 215:11 shown (23) 43:4 44:11,21 45:11 45:13 55:24 81:19 89:6 90:4,11,13 96:18 138:8 162:12 162:24 166:17 185:23 208:11 212:19 213:21 264:6,8 276:3 shows (2)</p>
---	---	---	--	---

95:17 255:9 shrink (4) 142:15 143:19 144:2 144:6 shrinking (2) 143:23 144:8 shrunk (2) 121:20 122:4 sic (2) 34:19 238:18 side (11) 27:4 36:12 81:9,11 87:17 88:22 90:24 95:18,19 164:23 275:23 sign (3) 21:11,14 31:16 signature (1) 32:5 signed (13) 5:17,19 21:7,9 31:9 31:12 32:7 33:11 34:25 204:12,22 205:4 224:7 significant (1) 42:16 signing (1) 32:4 similar (3) 29:25 137:23 211:2 simpler (1) 111:19 simply (2) 122:17 214:3 simultaneously (2) 49:7,9 single (2) 203:4 284:18 singular (1) 99:3 SIPA (2) 4:16 248:6 sir (46) 15:8 19:17 46:6 51:24 53:5 54:20 71:9 78:11 81:12 82:14 83:20 84:4 88:20 90:22 91:4,19 98:10 111:15 113:22 117:9 119:7 123:17 172:12 188:8 207:14 215:11 249:8 250:11,20 252:4 253:15 254:12 255:3 256:9 257:23 266:24 267:12 268:4,13 270:3,11,25 271:16 275:7 285:11,14 sit (4)	93:14 160:12 166:23 166:23 sitting (2) 195:8 198:12 situation (2) 37:4 119:4 size (13) 42:14 43:10 88:18 128:22 138:2 231:19,24 232:22 233:5,17 234:14 235:25 238:24 Skip (4) 16:23,24 24:9 39:3 slightly (4) 19:19 97:8 100:6 185:24 small (1) 210:21 smoothly (1) 171:10 snarfed (1) 149:9 soft (1) 21:5 sold (6) 28:2 123:13 124:11 234:8 236:10 256:3 sole (1) 127:5 solve (4) 76:7,8,9 208:25 somebody (11) 28:18 38:18 43:21 84:19,20 153:25 235:13 250:5 266:2 267:3 286:24 somewhat (2) 102:23 114:23 sooner (1) 231:13 sorry (9) 51:4 60:18 85:12 213:5 223:13 227:4 245:14 261:19 280:25 sort (46) 23:18 32:19 36:25 42:13 44:14 48:6 53:11 58:23 67:9 68:4,9 70:25 73:20 80:14 82:22 89:12 89:14 95:10 96:24 108:24 109:18 125:2 144:24 154:21 161:7 164:24 175:9 176:22 177:17 183:20 201:9 213:13,16 215:5	220:20 228:23 235:24 238:2,16 239:3 245:18 247:10 248:25 251:15,24 263:17 sounds (2) 103:8 284:21 source (4) 64:25 250:5 252:14 253:6 sources (35) 30:2 41:20 59:12,17 60:11,14,20,23 61:3 61:8,21 62:2,10,14 62:17 72:3 102:8,12 102:20 103:11 104:3,10 105:7,15 147:25 150:9,18 188:24 244:20 251:4,16 252:8 256:24 263:21 264:2 South (2) 7:17,21 SOUTHERN (1) 1:3 speak (7) 7:19 16:10,11 104:5 139:25 159:23 179:18 speaking (4) 107:8 160:2,6 174:2 speaks (1) 286:15 special (5) 6:10 18:7 19:14 32:23 217:8 specific (74) 21:20,24 24:3 30:7 35:7 38:22 50:11,12 57:9 58:21 59:10 62:11 63:3 64:20 67:4,14 70:7 74:4 80:14 83:18 84:13 84:18 85:4 93:17 97:16 100:15 109:20 119:11 122:16,25 138:15 138:15,19 155:16 157:19 158:3,21 159:25 160:18 161:4 165:10 166:3 166:4 167:20 168:19 184:13 196:8 201:4 203:14 205:21 214:25 222:23 223:13 230:17,18 231:9 232:2,24 233:13 235:6,18,20 236:12	236:22 238:4,10 245:14 246:6,18 247:9 274:18 275:20 279:17,17 specifically (36) 30:12 37:20,21,22 44:16 49:6 65:12 69:17 70:2 76:3 91:16 107:2,9 121:13 146:16 149:4 152:21 153:18 155:9 156:8 170:25 172:8 173:10 176:10 180:2 182:20 183:18 192:21 207:2 215:20 218:13 234:19 242:25 248:23 254:22 271:14 specified (1) 139:17 specifies (1) 31:25 specify (1) 27:22 speculate (7) 115:25 141:17 144:24 170:25 246:7,19,21 speculating (5) 100:17 122:17 222:9 266:21 274:19 speculation (5) 33:23 145:7,8 170:23 270:16 speculatively (1) 107:9 speechifying (1) 75:24 speed (1) 123:11 spend (1) 283:25 spending (2) 158:20 256:20 spends (1) 208:6 spent (5) 63:5 96:25 198:12 247:15 259:17 spoke (10) 35:12 58:17 61:23 103:16,17,23 104:6 179:15 275:19 276:23 spoken (6) 107:10 140:13 160:8 233:10,16 271:9 spread (9) 46:3 234:23 236:16	236:19,20 237:7,16 237:19 239:2 spreadsheet (3) 264:15 281:10 285:7 spreadsheets (1) 83:12 ss (1) 290:5 stamped (19) 30:22 97:24 146:10 148:21 154:25 161:16 181:22 190:2 260:17 277:13 289:11,12 289:13,13,14,14,16 289:19,24 stand (6) 78:18 123:12 169:20 171:24 194:25 195:7 standard (7) 28:4 47:22 48:6 118:6 171:21 234:4 239:4 standards (2) 28:7 114:11 standing (5) 75:24 84:10,12 172:4 209:25 stand-alone (1) 250:9 start (5) 6:15 8:21 184:22 203:22 231:16 started (4) 83:3,4,6 215:19 starting (3) 121:19 196:10 216:16 state (8) 2:14 22:13 97:9 210:22 284:12,15 290:4,10 statement (2) 93:15 255:9 statements (2) 255:8 257:16 STATES (1) 1:2 status (1) 150:23 stay (4) 47:18 143:5 206:19 206:23 stayed (1) 34:18 staying (1) 110:7 step (5) 7:10 159:3 218:17 225:25 250:21 stepped (4)
--	---	---	---	---

206:8 210:20 268:22 269:3 stepping (3) 192:6 267:20 269:19 steps (3) 46:22 267:15 278:20 Steve (7) 24:11 57:7 246:12,16 247:5,5,21 Steven (1) 173:12 STIPULATED (3) 5:5,9,15 stock (7) 53:25 54:5,8,16 180:24 213:13,24 stood (3) 33:11 194:23 215:22 stop (1) 152:19 stopped (1) 152:22 straightened (2) 199:14,17 street (5) 2:11 3:5,18 4:5 192:2 stressful (1) 275:3 structure (1) 126:8 structured (1) 78:23 struggling (1) 70:24 subheading (1) 286:21 subject (22) 31:24 128:4 142:20 146:21 149:8 155:13,23 158:22 173:12 182:9 190:13 218:20 219:4 226:24 228:13 248:9 258:8 259:21 261:11 265:2 267:12 274:10 Subscribed (1) 288:14 subsequent (4) 55:12 100:4 272:14 273:11 subset (1) 16:6 substance (2) 102:11 140:10 substantial (10) 24:17 42:12,23 43:19 46:2 195:21 234:22 235:8 236:10	255:22 substitute (1) 161:10 succeed (5) 172:19 176:13 177:2 177:12,20 successful (4) 79:20 178:8 181:8,16 sufficient (1) 136:16 sufficiently (4) 51:24 54:22 86:14 277:17 suggest (5) 130:23 134:4 141:14 142:12 171:15 suggested (2) 135:18 252:9 suggesting (4) 137:15,20 150:12 151:11 suggests (8) 123:21 147:9 149:24 151:8 155:18 157:7 255:24 261:8 Suite (1) 3:12 sum (2) 102:10 282:21 summary (1) 189:6 summed (1) 241:22 Sunday (25) 12:24 153:4,7 158:23 160:11 197:14,20 198:4,9 200:12,13 200:14 202:4 247:12,12,13 254:15 256:22 257:16 261:10 263:6 267:13,22 268:15 278:6 supervision (2) 13:14 153:25 supplied (1) 25:18 support (5) 30:19 95:11 176:21 177:18 224:9 supporting (2) 24:3 208:19 supposed (4) 89:22,23 167:17 187:2 sure (47) 22:8 23:12 31:10 32:16 36:19 37:6 51:13 67:5,21 70:10 70:25 90:19 104:25	115:2 119:19 121:15 130:25 136:5 140:17 142:11 156:23 168:13 174:23 182:22 184:2 192:24 194:6 201:5 201:6,10 206:14 207:7 216:15 223:16 233:11 239:11 242:23 245:16 246:22 247:22 257:9 258:19,20,20 266:11 268:17 275:4 surmise (1) 130:16 surplus (1) 68:2 surprise (4) 66:5 79:9 85:19 213:17 surprised (4) 79:4 85:15,24 194:10 surprises (2) 142:9 143:2 surrounding (2) 23:7 212:19 swaps (1) 115:11 switch (1) 218:14 switched (1) 225:16 Switching (1) 230:24 sworn (5) 5:16,19 6:4 288:14 290:13 system (2) 170:8 256:14 systems (2) 131:16 199:20 <hr/> T <hr/> table (4) 6:16 57:24 212:4 275:24 Taggart (8) 4:7 217:3,4 233:22 247:24 275:14 283:21 289:5 take (56) 7:2,10 11:3 12:21 19:8 23:18 26:5 28:23 30:11 47:15 51:12 54:21 73:3 76:14 86:14 88:20 90:16 106:2 107:22	110:10 113:22 115:17 118:12 119:17 120:7 127:19,25 136:16 173:6 184:10 188:25 193:10,17 206:7,10 207:6,8 218:18 225:3,23 230:25 239:5,10 245:22 254:7 257:8 257:17 258:15 260:23 263:8 268:21 269:3 270:4 276:2 277:16 278:9 taken (19) 6:20 13:11 23:5 25:3 38:21 58:18 115:23 137:5,17 140:5,14 149:25 171:17 199:9,15 208:18 209:21 249:4 272:14 takes (4) 46:14 47:2 67:23,25 talk (13) 25:14 26:3 38:2 40:18 115:20 140:4,8,9 143:19 160:15 218:15 269:8 276:25 talked (29) 30:13 31:10 37:24 47:17 82:2,10 93:23 114:22 125:9 135:25 141:24 148:12,16 158:12 161:24 162:7 165:6 166:20 191:18,20 201:13 204:10 208:15 209:16 223:9 242:5 264:22 268:12 281:13 talking (24) 20:6 38:3 73:9 75:9 81:2 87:21 90:23 120:23 124:18 131:2 137:24 145:4 147:7 157:17,20 158:6 169:3 172:18 215:2 225:13 228:18 244:5 275:22 279:8 talks (1) 109:21 target (7) 62:16 150:13 151:6 151:12,16,18 152:4 targeting (1) 151:9 tasks (1)	108:20 tax (4) 10:18 11:24 14:13 180:13 TBA (5) 149:11 150:16,18 250:3 253:10 team (4) 169:11,25 174:24 188:2 teams (4) 39:22 40:6,6 273:5 tell (29) 15:23 16:12 17:3,20 23:2 36:2 39:16 44:9 51:24 54:22 65:9 70:18 71:4 78:11,21 86:15 101:16 106:3 110:11 120:7 127:12 128:25 147:12 168:17 173:7 190:5 214:22 263:9 267:19 telling (1) 278:24 ten (1) 90:16 tend (1) 29:5 tends (1) 28:8 term (11) 26:20 43:13 44:14 55:6,8 143:5,6 144:4 186:10 220:23 226:2 terminated (1) 117:12 terms (38) 17:15 18:2,3,5,18 19:23 20:14 22:6 25:8 26:15,18 28:12 38:6,10 39:16 42:8 42:10 45:12 49:4,9 52:25 53:4,6 56:16 75:14 107:6 111:17 111:21 114:23 118:7 133:21 138:6 174:2 183:5 187:23 217:25 218:6,12 testified (11) 6:4 222:24 227:19 228:16 229:18 231:15 245:10 248:13 264:3,9 266:23 testify (2) 235:23 253:22 testifying (1)
---	---	---	--	---

testifying (1) 140:11	172:21 173:17,19 176:9,16,16 177:4 177:10,11,19 178:6 178:7 183:2,19 186:9,23 192:9,10 199:2,10,16,17 202:15,16 203:18 205:2 207:3 208:3 208:18 209:23 210:13,14,21 221:14 222:2,9,21 223:6 225:22 227:9 227:19,22 228:2,16 228:17 229:9 231:13 238:22 240:3 242:14 243:11 244:19 245:16 246:5,7,20 247:3,5,6,20 250:13 252:17 262:8 264:19 274:23 275:17 279:6,13 281:17 282:11	38:5 41:7,8,10 42:23 49:17 50:15 52:21,23 56:4,5 57:19 63:6,25 67:17 67:24 71:21 76:8 79:24 86:6 97:2,11 105:5 106:23 111:25 112:8 113:11 127:7 131:16 135:14,17 147:22,22 152:3,4,6 158:20 159:22 161:14 168:5 172:8 178:4 194:10 198:11 199:13 205:11 208:6 209:16,16 210:17 210:18 211:14 216:11 219:5 230:15 231:6,8 232:9,11 242:11 244:17 253:15 254:18 256:21 257:2 259:17 260:23 263:12 274:8 275:3,6 283:25 288:9	273:9 Tom (2) 16:22 237:10 tomorrow (7) 131:15 137:11 142:11 142:21 143:11 145:15 280:11 tonight (1) 137:8 Tonucchi (1) 66:9 Tonucci (44) 14:11 63:13 106:18 107:24 136:23 142:7 156:19 169:9 173:12 175:11 176:11 177:2,24 178:12,20 179:4,5 179:15,24 180:2,6 182:9 188:14,18 189:3 190:12 192:14 196:14 203:17,24 204:20 205:14 206:18,23 215:16 220:2 222:10 247:19 250:15 253:17,24 274:7,9,16 Tonucci's (2) 173:21 175:2 top (16) 89:24 101:19 106:11 110:15 140:23 141:25 155:6 159:19 164:25 182:10 184:19,20 196:11 256:10 277:24 279:19 topic (5) 114:24 129:2 160:14 179:10 277:8 topics (1) 230:24 top-down (6) 44:16,23 89:14 164:15,18 165:2 total (14) 53:22 89:19 165:19 186:18 189:12 193:8 228:7,8 229:9 229:10,20,21 230:11,12 totaled (1) 282:2 totals (1) 230:5 toxic (1) 114:5 track (3) 88:13 93:16,18	tracked (1) 93:3 tracking (1) 80:13 trade (5) 68:3 79:13 117:23 177:12 205:23 traded (2) 126:5,25 traders (2) 131:6,23 trades (2) 25:11 67:24 trading (4) 41:7,10 210:22,25 trail (3) 173:9 184:14 254:11 transact (2) 171:18 239:2 transacted (1) 225:13 transacting (1) 16:3 transaction (167) 6:13 16:17 17:8,17,24 21:11,15 22:4,8,9 23:5,8 25:13,16,17 25:24,25 26:4,12 31:24 33:2,16,20 34:7,21 39:15,19 44:2,6 47:6,16,20 48:8,10,15 53:10 55:10,13,14,18 56:24 57:4 59:13,14 59:15,23 62:15 63:18,20 64:2,16,18 66:2,3 67:11,13 69:10,11,12 73:16 73:18 76:25 79:3,5 80:13,17 81:7 94:8 94:9 96:15 109:2,5 109:7 119:5 121:2 122:15 124:11,24 126:2,12,15,21 127:4,5,6 129:6,16 130:3,5 135:11 136:3 137:21 138:13 150:11 151:21 152:17 156:5 161:2,6 166:2 167:2 173:17 174:15 176:18,21 178:14 179:2,4,7,19 179:22 181:20 183:5 186:6,8,8 192:5 201:8,12 202:13,25 210:4 216:18 218:15 220:15,20,24 221:2 221:7 223:3,7,10,19
testimony (18) 70:13 77:21 78:15 94:21 107:13 138:10 176:2 207:13 223:4,17 227:25 228:23 231:22 234:11 237:24 266:24 267:16 290:14				
text (3) 142:2 147:2 200:16				
thank (11) 7:12 27:11 35:8 51:14 65:7 171:3 184:3 203:7 275:6,8 288:3				
Thanks (6) 30:4 173:13 196:21 196:24 207:25 280:23				
thick (1) 153:10				
thing (9) 6:19 47:21 82:24 124:24 138:17 139:7 243:23 249:10 253:25	thinking (4) 64:5 121:12 154:5 232:3 third (1) 32:6 THOMAS (1) 4:23 thought (10) 53:23 64:8 75:22 143:4 201:24 206:8 227:8 240:15 243:10 244:12 thousand (1) 285:19 thousands (1) 258:18 three (3) 36:19 54:7 216:15 Thursday (26) 20:3,5,6,10 26:7 65:22 103:6 116:2 116:11 117:2,5,6 120:20 122:13 125:5 126:10 137:19 143:12 149:23 185:18 192:13 194:24 225:14 280:10,13 280:16 tight (2) 156:23 157:4 tighter (2) 142:11 143:11 time (83) 5:12 7:5 10:16 11:15 12:14 17:12,14 18:16 32:19 35:10	times (2) 231:15 234:12 timing (2) 155:17 197:22 tip (2) 137:9 144:21 tired (3) 49:24 158:19 213:5 title (1) 121:21 toast (3) 176:14 177:3,25 today (26) 25:15 55:25 70:13 72:7,18,22 107:13 114:22 122:9,22 123:11 139:11 140:5 142:8 160:12 169:18 185:16 209:16 216:13 233:15 234:11 245:10 249:22 271:9 277:21 281:13 told (20) 35:12 48:25 58:16 61:7 66:18 71:24 72:5 82:14 92:11 102:6 111:20 131:14 169:15 171:24 172:9 175:24 205:14 234:25 265:20		

223:25 225:14 228:20 233:24,25 234:2,2,5,10,13 236:24 237:8,17,20 237:23 238:11 239:24 248:15,20 249:13,15 250:9 251:2 252:12,15 253:19 263:16,20 264:20 273:11 274:20,22 275:16 279:16 transactions (4) 27:20 236:6,23 238:5 transcript (3) 164:9,10 236:18 transcription (1) 291:8 transfer (14) 126:6 173:16 174:18 174:19 191:5 192:17 202:20 205:16 240:11 241:18 270:12 271:3 273:20 278:25 transferred (19) 22:22 60:12 77:18 165:11 183:10,15 185:17 186:6 209:2 220:7 221:6 239:17 240:24 241:6,11,12 242:17 243:21 273:2 transferring (2) 68:17 223:18 transmitted (1) 222:12 transpired (1) 58:22 treading (1) 48:25 treasurer (2) 10:17 14:12 Treasuries (1) 204:2 treasury (3) 11:24 144:5,6 treat (1) 271:13 treated (1) 271:14 trial (1) 5:12 tried (1) 206:19 triparty (16) 29:9,9,11,15,20 98:17 100:10 116:5,6 167:23 170:8	190:20,24,25 195:11 219:17 true (1) 290:14 trustee (2) 4:16 248:6 try (6) 6:24 7:4 14:25 23:14 28:12 206:23 trying (13) 23:16 46:15 88:13 126:8 129:4 132:25 141:13 174:11 199:2 202:14 239:16 246:24 268:19 TSA (1) 224:7 Tuesday (36) 17:19 35:18 36:22 38:9,11 40:8 42:7 46:20 48:23 49:12 49:20,22 50:19 59:5 59:9,16 72:12 73:13 73:19 80:12,18 81:8 83:2,5 108:19 109:25 115:10 121:19 122:4 129:10 192:11 212:7 215:3 220:21 227:23 249:6 tumultuous (5) 39:7 42:24 64:22 66:5 108:11 turmoil (1) 34:5 turn (1) 266:18 turned (2) 148:4 266:22 two (34) 6:24 15:9 18:7 19:14 19:15 33:12 38:10 38:12,15 54:20 79:12 87:22 125:8 125:16 141:25 143:14 157:25 178:13 185:17,22 186:4,7 208:23 225:16 238:23 244:15 273:6 275:9 276:17 277:14,24 278:23 281:2 289:25 two-page (7) 154:14,16 161:8 189:25 203:8 289:18,20 type (2) 183:14 255:2	typical (1) 48:7 T.J (1) 261:5 <hr/> U <hr/> UCC (1) 286:12 Ullman (1) 196:13 ultimate (3) 189:21 207:18 227:14 ultimately (11) 12:9 44:20 47:5,9 90:9 117:10 172:19 186:5 187:12 218:24 223:8 unable (1) 244:3 unaware (1) 240:21 uncertain (1) 270:19 uncertainty (5) 29:2 201:9 232:10,12 270:22 uncomfortable (1) 227:12 undergoing (1) 203:6 undergraduate (1) 7:22 underlying (3) 29:8 128:24 138:3 understand (47) 10:5 15:8 17:6 18:16 35:21 36:4 37:9,15 45:24 52:25 53:14 53:20 56:15 57:15 67:22,22 69:9 76:23 101:21 106:10 128:16 131:20 132:19 137:14 144:22 146:2 170:12 171:15 183:20 189:11 199:2 216:8 218:16 223:16 224:25 225:15 228:16,24 234:9 239:15 246:22 249:3 268:17,19 270:12 271:16 280:12 understanding (74) 15:10,11 16:10 21:10 21:13,17,19 35:17 41:12 44:5 46:6 53:9 60:7 63:15,25 64:17 68:21 74:18 75:13 77:3 78:11,12	78:23 80:2 81:6,21 94:7,8,18 96:14 107:11 108:17 109:24 110:20 112:20 113:2 114:19 117:9 141:4 141:7 145:16 165:23 202:13 206:4,22 212:23 213:7,10 216:12 219:7 222:25 225:10,20 238:5,6 242:15 244:25 245:17 247:10 249:8 250:8,11,20 254:20 258:23 259:7 260:18 262:18 265:6 268:13 269:2 270:25 272:24 274:15 understood (16) 16:2 31:17 32:3 40:25 53:22 80:16 133:5 135:15 170:19 172:22 204:7 234:23 263:12 267:4 269:15 276:16 undertaken (1) 229:11 undertook (2) 125:5 130:19 unencumbered (98) 59:20 60:5 67:18 71:11,11,24 75:3,8 75:9 77:5,20 121:4 124:18 125:2,6,11 125:13,17,23,25 126:16,24 147:4,13 147:16,17 151:24 152:7 153:3,6 156:22 157:5,9,23 160:23 172:21 174:3,20 182:10,23 186:10,14,17 199:3 199:7 200:18 201:2 201:6,11,15,21,24 202:6,18,18,24 221:12,15 222:13 222:19 223:20 239:14,16,20,25 240:5,10,16,24 241:5,9,20,24 242:7 242:10,12,17,24 243:2,4,9,10,14,17 243:21,25 244:2,12 244:14,21,24 245:3 250:19 264:10,15 281:12 282:17,23	unfortunately (2) 84:22 277:10 unit (1) 285:15 UNITED (1) 1:2 University (2) 7:16,20 unknown (3) 106:7,11 141:25 unmark (1) 161:11 unsecured (1) 217:7 unsuccessful (1) 148:19 unsure (1) 243:13 unusual (1) 233:9 unwind (3) 68:9 101:13 190:22 unwinding (1) 191:10 unwound (2) 117:6 270:21 update (3) 150:23 196:15 279:25 updated (3) 22:19 230:20 261:12 updates (1) 66:20 urgency (4) 103:10 146:21 147:21 148:9 URQUHART (1) 4:3 use (6) 93:11 128:20 175:14 252:2 280:10,12 usually (1) 280:15 utilizing (2) 24:24 170:8 <hr/> V <hr/> vague (21) 23:9 30:17 42:19 47:7 47:11 64:3 71:13 78:7 82:4 89:12 105:11 117:13 174:8 186:16 210:11 218:8 228:5 230:2 238:20 261:24 266:15 vain (1) 178:11 validate (1) 42:3 valuation (3)
---	--	--	---	---

222:23 233:2 266:6 valuations (1) 166:12 value (97) 28:13,19 40:20 41:9 59:12,18 60:4,4,5 60:14,20,23 61:3,8 61:21 62:2,10,14,17 62:22 63:7,11,17 64:11,25 65:17,25 66:7,12 78:13 88:17 90:4 92:5 96:18 101:17 102:8,12 103:11 104:4,10 105:16 120:24 122:11 126:14 138:7 147:8,13,25 150:3,9,10,14,18,25 151:3,5,22,23 152:9 152:11,14 158:6 165:15 169:12,25 170:7,9 173:16 181:16 183:9,16,18 186:5 209:19 222:18 223:7 231:3 239:8 241:22 249:17,25 250:6 251:5,16 252:8,10 252:15 253:6,11 255:10,22 256:25 263:22 264:3 265:16 282:10 285:11 valued (4) 29:8 210:9,9 264:11 values (8) 29:20 60:11 81:19,22 162:22 166:10,10 186:12 valuing (1) 245:6 variety (2) 127:2 281:23 various (17) 26:20 29:14 39:22 47:19 50:20 81:12 82:15 87:15 92:23 95:5 121:23 151:24 177:18 180:24 217:16 224:9 253:2 vendor (2) 106:13 284:21 version (8) 80:22 82:24 161:8,9 225:5 230:8 234:7 249:11 versus (2) 90:6 208:10 vest (1) 54:12	vesting (1) 54:8 view (15) 34:15 44:17,23 45:4 80:2 113:20 122:14 164:15,23 165:2,24 220:2 227:6 233:9 273:7 viewed (1) 97:5 violating (1) 57:22 vis-a-vis (10) 39:14,18 60:8 91:25 95:4 143:2 150:24 159:4 176:23 268:20 VIX (3) 257:15 258:7,9 voice (4) 6:18,24 14:21 15:5 volatile (1) 45:25 volatility (16) 42:15 43:10 94:4 128:23 138:3 163:11 231:20,25 232:16,17,23 233:6 233:18 234:15 235:25 258:10 V-I-X (1) 257:16 <hr/> W <hr/> Wabash (1) 4:11 wait (1) 280:11 waiting (6) 38:9,20,24 39:11 49:7 158:20 waived (1) 5:8 waiver (1) 57:20 waiving (3) 19:5 57:17 58:9 Walker (1) 261:5 want (46) 14:22 18:15 20:12 35:10,11 40:7 41:2 46:12,18 69:22,25 76:2 83:22 100:19 102:5 106:14 109:14 111:3 112:16,24 114:21 115:14 130:23,24 132:6 139:10 141:16 164:10	168:12 176:22 184:17 189:10 206:7 207:8,22 208:17 218:14 225:16 230:24 234:11 239:13 241:3 259:5 280:10 284:12,14 wanted (22) 17:23 19:12 37:25 69:2 113:17 115:17 124:6 141:9 143:24 153:19 154:6 160:15 163:9 174:23 179:21,24 201:5 205:22 207:14 237:6 263:24 281:18 wanting (1) 113:19 wants (3) 92:15,16 238:24 war (3) 278:13,16,25 Washington (2) 3:13,19 wasn't (66) 12:24 17:7,8,10 22:18 22:18 34:17 35:6 42:9 45:3 50:11,21 59:22 60:15 65:7 66:5,20 71:17 74:15 84:19,20 92:20 93:5 96:23 105:4 112:17 114:14 115:15 118:18 121:12 125:24 127:5 133:20 143:6 158:4 160:3 164:25 169:8 171:6 179:25 187:25 194:7 199:16 201:20 202:5 205:10,11 214:7 220:17 221:25 227:2,18 236:12 237:19 244:6 249:9,10 251:6 253:7 259:17 259:18 265:14 266:7 269:21 272:13 273:5 way (49) 22:16 48:5 50:6 56:7 78:23 99:10 107:4 107:15 116:3,19 122:23 129:5 132:24 135:22 137:21 138:14 142:14 145:13 148:16 163:18	164:11,12 165:18 166:6,9 167:21 189:15 193:13 195:11 213:22 218:4 220:22 221:5 222:17 225:17 227:5 252:22 260:14 262:3 267:8 273:21,22 278:18 279:2,15,18 283:16 284:9 290:18 ways (2) 24:22 143:24 wealth (3) 8:16 9:19 140:6 Wednesday (6) 24:25 26:6 117:5 142:24 191:20 192:12 wee (1) 104:21 week (43) 22:2,13,14,21,24,25 23:18,19,21 24:15 32:11 33:8,13 34:5 34:19 39:7 42:16 46:7 50:23,24 52:25 56:5 103:8 108:11 109:25 114:25 115:9 118:14 121:18 127:8 159:5 172:13 178:21,23 179:4,18,22 212:15 232:10 253:15 256:2 272:6,18 weekend (26) 57:7 58:17 64:7 65:16 65:23 73:21 74:5,16 152:24 153:2 156:6 156:13 158:8,17 160:7 183:13 199:17 208:16 209:20 221:11 271:18,23 272:3,22 278:19 280:21 weeks (4) 55:17,18,21 267:16 Weil (22) 83:12 84:5,16,21,23 85:2,4 111:9 153:15 156:24 158:20 160:10 196:20 197:24 198:4,8,11 221:20,22 246:5 247:6,16 Weil's (1) 247:13 went (21) 7:25 26:21 59:23 74:12 104:14,19,21	104:22 121:15 132:5 135:4 152:17 189:22 207:18 209:6 215:7 219:17 245:20 263:14 265:15 268:11 weren't (10) 37:6 39:25 92:4 129:12,14 172:6 194:11 195:14 221:3 272:20 we're (2) 6:10 217:9 whereof (1) 290:20 willing (34) 27:24 28:18,21 42:22 82:8 88:14,15,18 90:6 93:22 94:5 112:23 113:3 114:18 127:15 128:18 129:23 130:8 132:2,14 152:15 162:25 163:10,21 165:13 166:18 209:13,18 231:18 235:7,9,16 235:19,21 Willkie (3) 3:16 73:2 76:5 wind (2) 34:2 206:12 wind-down (1) 34:13 Wisconsin (1) 3:12 withdrawn (10) 17:13 71:22 81:2,10 81:17 135:16 154:24 173:23 255:19 258:22 witness (20) 3:11,17 6:3 14:25 27:10 57:22 70:9 75:25 76:13,23 131:10 161:15 193:24 236:20 275:8 289:3 290:11 290:15,20 291:5 Witwatersrand (2) 7:17,21 wondering (2) 89:5 141:17 WOOD (1) 4:20 word (7) 87:25 128:20 155:13 194:7 267:2,3 268:18 words (7)
---	---	--	---	---

91:3,4,6 98:13 169:6 275:17 286:18 work (61) 8:21 9:14 10:5 13:9 13:13 17:7 30:15 31:14,18 53:12 59:11,24 65:15 80:23,25 81:3 82:15 85:9,22 86:2,6,22 88:10 94:15,25 105:8,21 124:12 139:7,23 148:5 149:12 150:16 153:2 156:25 169:7 169:8 172:9 174:13 174:16 175:5,7,13 177:15 178:9 185:5 195:11 196:25 199:18 201:17,22 245:2 249:16 252:11 262:15 265:15 266:7 278:5 279:3,25 280:21 worked (19) 16:7 37:11 46:10 50:19 63:9,12 64:6 65:22 84:16,25 85:3 108:10 120:14 122:13 157:12 168:24 176:17 205:9,12 working (17) 33:14,15 34:16,20 39:5 64:10 65:13 96:10 111:9 120:19 161:2 181:19 196:11 201:19 202:17,25 249:14 world (1) 260:20 worried (1) 24:2 worth (4) 28:20 82:9,9 265:13 wouldn't (13) 30:2 36:24 63:20 79:3 79:20 83:23 95:12 121:24 163:17 164:11 210:25 265:16 266:19 wound (1) 34:4 write (6) 128:3 139:4 170:20 176:11 191:3 202:3 writes (13) 132:4 137:2 140:24 144:20 145:14 170:10 188:18	203:24 216:6 258:2 258:12 274:9 278:16 writing (7) 71:18 91:15 93:14 151:25 166:15 184:23 215:15 writings (1) 56:9 written (9) 19:22 50:17 52:17 56:15 87:15 91:6 145:22 165:5 236:18 wrong (2) 19:20 203:21 wrote (8) 91:4 112:14 128:12 141:19,21 158:15 160:15 177:24 X x (2) 1:4,10 Y yeah (32) 23:12 31:16 39:9 40:23 41:17 65:22 66:19 132:24 133:7 140:17 142:4 149:16 151:7 168:10 186:17 188:11 189:13,16 196:8 197:11,20 211:18 225:12 230:4 241:14 245:20 246:12 247:15 261:2 270:9 277:19 278:10 year (2) 8:20 54:6 years (4) 33:12 54:7,8 177:16 yelling (1) 15:4 yesterday (2) 142:15 169:20 York (15) 1:3,14,14 2:11,11,14 3:6,6 4:18,18 167:18 219:18 290:4,6,10 young (3) 83:17 84:5 86:5 Yup (1) 128:6 Z zillion (1)	92:15 \$ \$1 (3) 53:15,21 54:2 \$1.7 (1) 150:14 \$1.75 (1) 189:17 \$1.9 (1) 125:10 \$10 (4) 32:14,15 33:12 177:8 \$100 (1) 28:20 \$15.8 (3) 193:19,25 194:11 \$18 (5) 191:15 192:16,23 193:3,15 \$2 (10) 53:19 60:6 96:7 125:10,14 148:7 213:8,15,23 214:3 \$2.7 (1) 165:9 \$3.6 (1) 109:21 \$4 (3) 151:6,9,12 \$4.560 (1) 32:21 \$45 (5) 116:14,21 138:20,22 186:22 \$49 (2) 138:25 188:10 \$5 (7) 45:17,18 47:17 48:18 72:9 73:11 81:25 \$50 (3) 78:9 139:2 193:17 \$52.8 (1) 78:13 \$560 (2) 189:24 207:21 \$6 (1) 18:13 \$7 (1) 191:22 \$72 (1) 82:9 \$72.65 (1) 82:9 \$760 (2) 207:24,24 \$99 (1) 28:21 0	074 (1) 255:9 08-13555(JMP) (1) 1:7 1 1 (8) 51:18 52:14 77:25 141:15 158:16 264:6 285:20 291:7 1.3 (2) 149:10 150:5 1.7 (2) 149:11 152:2 1.763 (1) 189:12 1.875 (1) 19:19 1.9 (9) 185:23 186:14 196:15 264:13,14,16 281:14 282:18,22 1.95 (1) 182:13 1:04 (1) 182:8 1:10 (1) 120:3 1:36 (1) 147:22 1:42:32 (2) 173:3 289:16 10 (2) 110:9 280:9 10th (1) 4:5 10:23 (1) 197:19 10:27 (1) 185:11 10:31 (1) 188:16 10:51 (2) 159:21,21 10004-1482 (1) 4:18 10017-6702 (1) 3:6 10254271 (2) 277:14 289:25 10293506 (2) 181:23 289:17 10298186 (2) 161:17 289:15 11 (1) 1:6 11:18 (1) 225:19 11:53 (2) 114:2 274:7	11:53:18 (2) 274:3 289:24 115595 (1) 100:21 115596 (2) 101:5,10 115597 (1) 101:8 115654 (1) 98:6 12:34 (1) 111:24 127 (2) 136:13 144:15 137537 (2) 155:2 289:14 138017 (2) 148:22 289:13 14 (1) 141:24 146 (1) 289:13 148 (1) 289:13 15 (3) 15:19,22 193:22 15C (1) 271:22 15c3 (66) 59:19 60:7,8 66:23 67:8,15,21 68:2,4 68:15 69:17 71:12 71:24 77:5,6,24 124:18 125:11,14 126:15,23 148:3 149:9 150:2,3,4,15 152:7 156:21 157:5 157:9,23 160:23 172:23 174:2,17 175:6 176:24 188:19 189:7,17,20 189:21 203:18,24 204:5,8 207:18 223:20 250:3,18 264:4,21 270:13,18 271:2,3,8,18 272:2 272:5,21 280:3,15 280:20,22 15th (9) 15:25 20:7 22:3,14 33:8 40:9 41:13 56:5 253:15 15.8 (4) 191:11 193:9 194:16 195:19 154 (1) 289:14 16 (7) 49:20 51:22 106:24 107:5,16 162:13
--	--	--	--	---

40:9 41:13 83:2 227:23 234:13 16:35 (1) 191:3 16:44 (1) 193:6 161 (1) 289:14 17 (6) 111:24 114:2 128:3 129:2 131:13 132:4 17th (5) 129:18,20 165:5,17 166:16 17:01 (1) 189:6 173 (1) 289:15 176 (1) 207:17 18 (10) 32:6 35:2 133:14 165:21 190:12,20 191:3,4 192:19 193:6 18th (6) 20:9 31:9 33:10 117:3 136:24 145:22 181 (1) 289:16 184 (1) 289:17 1875 (1) 3:18 189 (1) 289:18 19 (41) 80:7,20 82:3 95:15,17 102:7 123:9,18,23 147:21 155:12 162:16,19,20 163:20 164:6,15,17 164:22 165:10,20 166:5,7,7 208:4,6,7 210:10,18 211:5 214:4,13 225:4 226:24 230:22 231:17 235:4 266:9 266:11,12 278:14 19th (9) 23:4,6 46:14,22 105:22 145:24 170:17 181:4 231:2 199 (1) 289:19 1994 (1) 10:6 <hr/> 2 <hr/> 2 (19)	54:14 77:22 95:22,25 147:4 148:4 211:12 212:11 213:10 214:5,16 255:12 264:11,13,14,16 281:14 282:18 291:7 2.25 (2) 95:22,25 2.7 (1) 165:12 2.8 (1) 114:6 2:15 (3) 199:23 200:10 289:20 2:20 (2) 261:11 263:5 20 (9) 1:15 2:5 55:4 106:2 156:20 159:22 185:10 189:3,5 20th (7) 73:22 74:6 104:22 176:12 182:7 272:3 290:21 200 (4) 86:12 90:22 93:11 230:7 2000 (2) 10:18 18:12 20006-1238 (1) 3:19 20015 (1) 3:13 2005 (2) 10:18,20 2006 (1) 10:21 2007 (3) 11:12 18:7,10 2008 (12) 6:13 11:14,17 12:15 41:13 51:22 54:13 136:24 182:7 185:10 199:23 289:20 2009 (6) 1:15 2:5 18:6 106:8 288:16 290:21 203 (1) 289:20 21 (4) 199:23 200:9 226:12 289:19 21st (13) 73:22,22 74:6 202:4 247:13 254:15 257:16 261:10 263:6 267:13 268:16 271:19	272:3 216 (4) 30:22 31:2 289:5,11 217 (5) 97:24 98:4 284:13,18 289:12 218 (3) 146:10,14 289:13 219 (11) 148:21,25 151:25 248:8 249:20 251:9 265:2,21 266:14 283:7 289:13 22 (5) 203:17 204:21 215:18 235:14 255:8 22nd (13) 8:25 9:7,9 22:4,15 33:9 56:6 74:20,21 79:25 253:16 271:19 274:8 220 (10) 154:14,24 161:12,16 168:4,7,9,11,16 289:14 221 (5) 154:25 155:5 159:19 160:13 289:14 222 (5) 2:10 3:5 173:2,5 289:15 223 (3) 181:22 182:2 289:16 224 (3) 184:5,10 289:17 225 (3) 189:25 190:4 289:18 226 (3) 199:22 200:2 289:19 227 (4) 203:8,12 215:25 289:20 228 (3) 257:5,12 289:21 229 (9) 260:11,25 265:4 281:6,8 283:11 285:6 286:9 289:22 23 (10) 8:12 127:19 131:9 161:22 163:13 164:3 165:4 166:21 169:3,5 230 (3) 274:2,6 289:23 231 (2) 277:13 289:24 24 (2) 54:18 55:2 24043 (1)	1:19 248 (1) 289:6 25 (4) 18:10 19:18 54:19 55:3 257 (1) 289:21 260 (1) 289:22 27 (1) 280:9 274 (1) 289:23 276 (1) 289:4 277 (1) 289:24 281 (1) 289:7 285 (1) 289:6 <hr/> 3 <hr/> 3 (15) 62:19,22 63:6,10,16 64:10 65:25 66:11 137:3 144:20 151:7 151:13,16 152:9 291:8 30 (1) 289:11 31st (3) 61:10,11,13 32nd (4) 38:20,24 49:10 84:11 330 (1) 4:11 37 (2) 30:23 289:11 <hr/> 4 <hr/> 4 (13) 62:19,22 63:6,10,16 64:10 65:25 66:11 150:13 151:8,14,16 152:9 4:02 (2) 203:20,23 4:03 (1) 254:19 4:07 (1) 190:12 4:08 (1) 257:16 40 (1) 226:13 40.31 (1) 88:2 41 (3)	88:24 89:2,4 41st (2) 2:10 3:5 42 (2) 88:24 188:3 42628 (2) 146:11 289:13 44.8 (1) 282:2 45 (3) 215:12 224:13,16 48 (1) 193:9 49 (7) 185:19 186:13,20,24 187:5,5 188:11 49.7 (1) 282:11 49.9 (2) 200:20 282:11 <hr/> 5 <hr/> 5 (22) 82:13 97:13,20 120:6 125:18 149:12 150:20 189:6 190:13 248:10,20 248:23 252:24 253:4 264:24 265:19,24,25 283:5 283:14,16 284:4 5-0 (1) 193:24 5:01 (1) 189:3 5:10 (1) 106:24 5:22 (1) 204:21 5:24 (1) 203:18 5:51 (1) 288:9 5:52 (1) 156:20 50 (10) 78:5 110:2,3 138:20 138:22 186:20 187:5 188:12 193:23,24 507 (3) 258:15,15,18 51.8 (1) 282:6 52 (1) 282:21 522 (1) 255:10 5301 (1) 3:12
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<div data-bbox="256 174 279 203">6</div> <div data-bbox="138 205 402 762"> <p>6 (1) 289:4 6:04 (1) 136:24 6:12 (2) 184:6 289:18 6:20:35 (2) 260:12 289:23 6:24 (2) 123:8,23 60611-7603 (1) 4:12 63.8 (1) 193:11 654 (2) 97:25 289:12 66B (2) 168:6,8</p> </div> <div data-bbox="256 772 279 802">7</div> <div data-bbox="138 804 402 1896"> <p>7 (19) 8:12 123:11 142:10 142:19 143:7 185:19 186:24 187:2,8,23 188:3 196:18,19 197:5,9 197:20 275:2 281:19 285:23 7th (1) 57:7 7.4 (1) 216:7 7.5 (1) 19:18 7:12 (1) 155:12 7:53 (1) 274:8 700 (1) 125:15 7000 (1) 285:23 70327 (2) 203:9 289:21 745 (1) 49:10 750 (2) 60:9 78:3 760 (1) 264:23 769 (2) 204:2,9 77B (1) 196:5 77882 (2) 190:2 289:19</p> </div> <div data-bbox="256 1906 279 1936">8</div> <div data-bbox="138 1938 402 1980"> <p>8 (1)</p> </div>	<div data-bbox="412 174 673 667"> <p>274:24 8.4 (1) 88:2 8/20/09 (1) 291:4 8:08 (1) 278:14 8:09:34 (2) 257:6 289:22 80 (9) 18:6,12 285:12,13,13 285:17 286:3,4,7 800 (4) 3:12 60:9 78:3 125:15 865 (1) 4:5</p> </div> <div data-bbox="524 678 547 707">9</div> <div data-bbox="412 709 673 1665"> <p>9/20/08 (1) 256:15 9/20/2008 (4) 173:2 184:6 289:15 289:18 9/21/2008 (4) 257:5 260:11 289:21 289:22 9/22/08 (1) 256:12 9/22/2008 (2) 274:2 289:23 9:15 (1) 196:15 9:29 (1) 128:3 9:31 (1) 2:6 9:33 (1) 176:12 9:35 (1) 131:13 9:41 (1) 132:4 90017 (1) 4:6 95B (1) 254:7 97 (1) 289:12 99 (1) 28:25</p> </div>			
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EXHIBIT N

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS Case No. 08-13555(JMP)
8 HOLDINGS, INC., et al, (Jointly Administered)
9 Debtors.

10 -----x

11
12 DEPOSITION OF EDWARD J. ROSEN

13 New York, New York

14 February 19, 2010

15
16 Reported by:

17 MARY F. BOWMAN, RPR, CRR

18 JOB NO. 28461
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21
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23
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25

Page 2	Page 3
<p>1 2 3 4 5 February 19, 2010 6 9:35 a.m. 7 8 Deposition of EDWARD J. ROSEN, held at 9 the offices of Cleary, Gottlieb, Steen & 10 Hamilton, LLP, One Liberty Plaza, New York, New 11 York, before Mary F. Bowman, a Registered 12 Professional Reporter, Certified Realtime 13 Reporter, and Notary Public of the State of New 14 York and New Jersey. 15 16 17 18 19 20 21 22 23 24 25</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 2 APPEARANCES: 3 4 JONES DAY, LLP 5 Attorneys for Lehman Brothers, Inc. 6 222 East 41st Street 7 New York, New York 10017-6702 8 BY: ROBERT W. GAFFEY, ESQ. 9 10 11 BOIES, SCHILLER & FLEXNER, LLP 12 Attorneys for Barclays and The Witness 13 5301 Wisconsin Avenue, NW - Suite 800 14 Washington DC 20015 15 BY: HAMISH HUME, ESQ. 16 17 18 QUINN, EMANUEL, URQUHART, OLIVER & HEDGES, LLP 19 Attorneys for the Creditors Committee 20 51 Madison Avenue - 22nd Floor 21 New York, New York 10010 22 BY: ROBERT DAKIS, ESQ. 23 24 25</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 4	Page 5
<p>1 2 APPEARANCES: 3 4 HUGHES, HUBBARD & REED, LLP 5 Attorneys for the SIPA Trustee 6 One Battery Park Plaza 7 New York, New York 10004-1482 8 BY: WILLIAM R. MAGUIRE, ESQ. 9 AMINA HASSAN, ESQ. 10 11 CLEARY, GOTTLIEB, STERN & HAMILTON, LLP 12 Attorneys for the witness 13 One Liberty Plaza 14 New York, New York 10006 15 BY: BOAZ S. MORAG, ESQ. 16 ROBERT P. DAVIS, ESQ. 17 18 19 20 21 22 23 24 25</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 2 3 4 5 IT IS HEREBY STIPULATED AND AGREED, by 6 and between the attorneys for the respective 7 parties herein, that filing and sealing be 8 and the same are hereby waived. 9 IT IS FURTHER STIPULATED AND AGREED 10 that all objections, except as to the form 11 of the question, shall be reserved to the 12 time of the trial. 13 14 15 IT IS FURTHER STIPULATED AND AGREED 16 that the within deposition may be sworn to 17 and signed before any officer authorized to 18 administer an oath, with the same force and 19 effect as if signed and sworn to before the 20 Court. 21 22 23 24 25</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

Page 6	Page 7
<p>1 ROSEN</p> <p>2 (Exhibit 622, declaration of Edward J.</p> <p>3 Rosen marked for identification, as of this</p> <p>4 date.)</p> <p>5 EDWARD J. ROSEN,</p> <p>6 called as a witness by the parties,</p> <p>7 having been duly sworn, testified as follows:</p> <p>8 EXAMINATION BY</p> <p>9 MR. MAGUIRE:</p> <p>10 Q. As you know, my name is Bill Maguire</p> <p>11 with Hughes, Hubbard & Reed. I am here with my</p> <p>12 colleague Amina Hassan. We represent James</p> <p>13 Giddens, the SIPA trustee.</p> <p>14 We are going to ask you some</p> <p>15 questions. If any questions are unclear, let me</p> <p>16 know. If you need to take a break at any time,</p> <p>17 just let me know.</p> <p>18 I will show you a document we have</p> <p>19 marked as Exhibit 622. If you can tell me what</p> <p>20 that document is, sir.</p> <p>21 A. It looks like my declaration, pursuant</p> <p>22 to Rule 30(b)(6).</p> <p>23 Q. You have mentioned in the second</p> <p>24 paragraph that you specialize in derivatives.</p> <p>25 Do you see that?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 A. Yes.</p> <p>3 Q. Can you tell me what -- the</p> <p>4 derivatives that Barclays acquired in the</p> <p>5 transaction that's the subject of this, did that</p> <p>6 include any futures contracts?</p> <p>7 MR. MORAG: Object to the form.</p> <p>8 A. It did, it did include the acquisition</p> <p>9 of the futures business.</p> <p>10 Q. And did that futures business include</p> <p>11 any positions?</p> <p>12 A. I don't know. I don't know what</p> <p>13 positions were actually on. We didn't handle</p> <p>14 the futures side of the arrangements. Those</p> <p>15 were handled by S&C, by and large.</p> <p>16 Q. Did you have an understanding whether</p> <p>17 any futures contracts were included in the</p> <p>18 acquisition by Barclays?</p> <p>19 MR. MORAG: Object to the form.</p> <p>20 A. Yes. I believe, my understanding was</p> <p>21 that there were futures positions and listed</p> <p>22 options positions.</p> <p>23 Q. And what kinds of futures and options</p> <p>24 contracts did you understand Barclays to be</p> <p>25 acquiring in this transaction?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 8	Page 9
<p>1 ROSEN</p> <p>2 A. I'm not sure I understand the</p> <p>3 question, what type of futures options.</p> <p>4 Q. Were they exchange-traded or over the</p> <p>5 counter?</p> <p>6 A. Yes, yes, listed. Not over the</p> <p>7 counter. My understanding was the</p> <p>8 over-the-counter business was excluded.</p> <p>9 Q. Did you have an understanding how</p> <p>10 Lehman organized its derivatives business?</p> <p>11 A. No.</p> <p>12 Q. When did you become involved in the</p> <p>13 transaction?</p> <p>14 A. My recollection was sometime around</p> <p>15 the 15th of September, maybe the 14th of</p> <p>16 September.</p> <p>17 Q. And what was your role?</p> <p>18 MR. MORAG: Time frame? At the start?</p> <p>19 Q. Starting on the 15th.</p> <p>20 A. On the 15th, going forward, I was both</p> <p>21 dealing with certain of the deal issues relating</p> <p>22 to the regulated character of the transaction,</p> <p>23 and also dealing with certain regulators on</p> <p>24 issues that needed to be addressed if the deal</p> <p>25 was going to be closed.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 That's primarily what I was doing, but</p> <p>3 also the clearinghouse issues that arose and the</p> <p>4 JP Morgan issues that arose, I had some</p> <p>5 involvement in, as events unfolded between then</p> <p>6 and the 22nd.</p> <p>7 Q. When you say the clearinghouse, are</p> <p>8 you referring to DTCC?</p> <p>9 A. And OCC.</p> <p>10 Q. What regulators did you deal with?</p> <p>11 A. I spoke with the SEC. I did have one</p> <p>12 or two conversations with staff at FINRA, and I</p> <p>13 had a couple of conversations with folks at the</p> <p>14 Federal Reserve.</p> <p>15 Q. With whom did you deal at the SEC?</p> <p>16 A. I had conversations with Mike</p> <p>17 Macchiaroli, Randall Roy, and Dan Gallagher.</p> <p>18 Q. What were the subject of your</p> <p>19 conversations with Mike Macchiaroli?</p> <p>20 A. There were a couple of issues. The</p> <p>21 principal issue related to the fact that Lehman</p> <p>22 operated under a different -- was registered</p> <p>23 under a different broker dealer regulatory</p> <p>24 regime with different capital requirements than</p> <p>25 Barclays, and there were questions about how</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

<p style="text-align: right;">Page 10</p> <p>1 ROSEN</p> <p>2 capital would be computed in the face of the</p> <p>3 combination of those two entities.</p> <p>4 Q. What was the outcome of those</p> <p>5 discussions?</p> <p>6 A. The outcome of those discussions was</p> <p>7 that the SEC confirmed that following the</p> <p>8 combination -- it is a little bit complicated,</p> <p>9 but in essence, that the surviving entity could</p> <p>10 take advantage of the regulatory status that the</p> <p>11 LBI broker dealer enjoyed with potential</p> <p>12 accommodations being made for systems</p> <p>13 integration, things like that. Because you have</p> <p>14 systems to compute capital and they were</p> <p>15 disparate systems.</p> <p>16 Q. Notwithstanding Barclays' acquisition</p> <p>17 of the North American business, the acquired</p> <p>18 business would remain subject to the previous</p> <p>19 regulatory capital regime?</p> <p>20 A. It would actually be sort of a</p> <p>21 combination of the two, but would ultimately, to</p> <p>22 the extent that the systems were able to</p> <p>23 consolidate, it could be operated under the same</p> <p>24 regime, yes.</p> <p>25 Q. Did you have any discussions with</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 11</p> <p>1 ROSEN</p> <p>2 Mr. Macchiaroli specifically about the amount of</p> <p>3 capital that would be required to operate the</p> <p>4 acquired business?</p> <p>5 A. The amount of capital? There was a</p> <p>6 conversation about whether or not there would be</p> <p>7 combined tentative net capital, I believe, of</p> <p>8 5 billion dollars, and I believe the view was</p> <p>9 that there would be adequate tentative net</p> <p>10 capital.</p> <p>11 Q. What was your understanding as to what</p> <p>12 tentative net capital meant?</p> <p>13 A. It's a calculation before certain</p> <p>14 deductions for various positions and associated</p> <p>15 risks of a market credit nature. I should add I</p> <p>16 am not an expert on capital computations.</p> <p>17 Q. Is what you are describing an</p> <p>18 understanding that was reached between Barclays</p> <p>19 and the SEC, that there would be a tentative net</p> <p>20 capital of 5 billion dollars following the</p> <p>21 acquisition to support the acquired business?</p> <p>22 A. I don't recall it being an express</p> <p>23 condition or agreement. And I think, I think</p> <p>24 people possibly operated under the assumption</p> <p>25 that there would be adequate tentative net</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
<p style="text-align: right;">Page 12</p> <p>1 ROSEN</p> <p>2 capital as a result of the combination.</p> <p>3 Q. Do you know whether any such</p> <p>4 understanding was documented?</p> <p>5 A. There was language -- there was an</p> <p>6 undertaking, which I don't recall the terms of,</p> <p>7 there was an undertaking that was provided by</p> <p>8 Barclays to the SEC, because there hadn't</p> <p>9 been -- usually you go through a formal process</p> <p>10 in order to become part of this regime, and</p> <p>11 there was a document. I don't recall its</p> <p>12 contents sitting here now.</p> <p>13 Q. Who prepared that undertaking?</p> <p>14 A. That was I believe prepared at</p> <p>15 Barclays.</p> <p>16 Q. Who is the person on the Barclays side</p> <p>17 who was responsible for the net capital</p> <p>18 discussions with the SEC?</p> <p>19 A. That, I mean, I don't know. I, I</p> <p>20 believe, corresponded with Jonathan Hughes and</p> <p>21 Alan Kaplan on those issues. I don't know who</p> <p>22 they may have coordinated with internally.</p> <p>23 Q. Was there any discussion with Mike</p> <p>24 Macchiaroli about where Barclays would get the</p> <p>25 5 billion tentative net capital?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 13</p> <p>1 ROSEN</p> <p>2 MR. MORAG: Object to the form.</p> <p>3 A. No. Not that I recall, I should say.</p> <p>4 Q. Was there any discussion with Mike</p> <p>5 Macchiaroli as to whether the acquired business</p> <p>6 itself would be a source of the capital needed</p> <p>7 to support its future operations?</p> <p>8 A. Could you ask the question again.</p> <p>9 Q. Yes. Was there any discussion with</p> <p>10 Mike Macchiaroli about whether Barclays would</p> <p>11 obtain the capital to support the business from</p> <p>12 the business itself?</p> <p>13 A. I don't recall discussing with him</p> <p>14 what the source of the tentative net capital</p> <p>15 would be.</p> <p>16 Q. Was there any discussion with Mike</p> <p>17 Macchiaroli about day one gain, profit that</p> <p>18 Barclays expected to make on the acquisition?</p> <p>19 MR. MORAG: Objection, foundation,</p> <p>20 lack of foundation.</p> <p>21 A. I don't recall having a conversation</p> <p>22 with Mike Macchiaroli about that.</p> <p>23 Q. Do you recall any such conversation</p> <p>24 with anyone at the SEC, including Randall Roy or</p> <p>25 Dan Gallagher?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

ROSEN

A. Remind me again, any conversation regarding --

Q. About Barclays anticipating making a day one gain or profit on the acquisition of the business.

A. I don't recall participating in or being aware. It doesn't mean that there weren't conversations. I was not a party to them.

Q. Were you aware at any point that Barclays did anticipate a day one gain or profit on the acquisition of the Lehman business?

MR. MORAG: Objection to form and foundation.

A. I don't recall having conversations about the accounting treatment for the transaction. So I couldn't say.

Q. And leaving aside accounting treatment, in terms of economic gain, were you ever aware that Barclays was anticipating an economic gain from the transaction?

MR. MORAG: Objection to the form.

Time frame.

A. I'm not sure what you mean by an economic gain. I do know that they wouldn't

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ROSEN

have done this transaction if they didn't think that it would have been profitable for them to do over the long term. I think they were making a major bet on their North American investment banking activities and taking a significant risk at the same time.

Q. But you have no further knowledge beyond that general understanding? And to help you, I am specifically talking not about a long-term gain or the expected performance of the business after the closing, I'm talking about whether Barclays anticipated that the total economic value of what it was getting in the deal would exceed what it was paying, such that it would record an immediate economic value in favor of Barclays at the closing?

A. No, but I don't think my involvement in the transaction would have necessarily positioned me to be part to those discussions. If they were to be had, they probably would have been with other people.

Q. Certainly that was not a subject that was discussed in any of your discussions with the regulators?

TSG Reporting - Worldwide 877-702-9580

ROSEN

A. I don't recall having a conversation with the regulators regarding the details of the -- you know, how the transaction would be reflected on Barclays' books and records. It was not part of my role in the transaction, I guess.

Q. Can you tell me any other subjects that you discussed with Mike Macchiaroli?

MR. MORAG: Please try to keep your voice up for the court reporter.

A. Conversations with Mike Macchiaroli. I'm sorry. I'm trying to remember certain subjects and who I would have spoken with about them.

I did have conversations with Mike Macchiaroli about sort of generally how things were going, because he was, from what I understood, the -- at Lehman presiding over sort of developments there. And we might have had -- we had conversations from time to time, and we may have spoken about how things looked from his perspective, and while I don't remember the specifics of the exchange that we had, I do remember coming away from the conversation with

TSG Reporting - Worldwide 877-702-9580

ROSEN

Mike, was, you know, not committal, and I think he was struggling to stay on top of all the information that he needed to figure out sort of where the books and records were, but I do remember coming away with the impression that he was optimistic that the assets there were going to be adequate for covering the customer claims, which was good, because everybody was hoping that there weren't going to be any obstacles.

I may have had other conversations, but I can't recall other conversations that I necessarily had with Mike.

Q. Any other conversations you recall with anyone else at the SEC?

A. Yes. I did have a conversation with Dan Gallagher at one point which related to an issue that I was not directly negotiating about the PIM accounts and what was coming across and what was not, and I had a conversation with Randall Roy about some additional relief that Barclays -- that Barclays identified relating to the Fed's request that Barclays step into its shoes in the repos that were outstanding with the Fed, and I can't remember, I can't remember

TSG Reporting - Worldwide 877-702-9580

Page 18	Page 19
<p>1 ROSEN</p> <p>2 for sure all the people at the SEC who I might</p> <p>3 have spoke with, but we did request that the SEC</p> <p>4 agree to waive certain rights that they might</p> <p>5 otherwise have been entitled to exercise that</p> <p>6 might have prevented Barclays from exercising</p> <p>7 its rights under the repo should the deal not go</p> <p>8 through. But I honestly can't remember the</p> <p>9 details of that. We did ultimately get that</p> <p>10 assurance.</p> <p>11 And I had a conversation with Bob</p> <p>12 Colby, who contacted me because there was a</p> <p>13 miscommunication among the representatives of</p> <p>14 the clearing organization, OCC, and the SEC, and</p> <p>15 there was some suggestion that the SEC was</p> <p>16 imposing a requirement on Lehman that would have</p> <p>17 prevented Lehman from taking the accounts at</p> <p>18 OCC -- I am sorry, I mean Barclays, take the</p> <p>19 accounts under the TAA, and I spoke to him</p> <p>20 regarding that, and it took a little bit of</p> <p>21 time, but it was identified as a</p> <p>22 misunderstanding on the part of outside counsel</p> <p>23 to OCC. So that issue disappeared.</p> <p>24 Q. Besides that misunderstanding and</p> <p>25 besides the PIM accounts and the repo and TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 capital requirements, any other subjects you</p> <p>3 recall discussing with the SEC?</p> <p>4 A. I may have had a number of others. I</p> <p>5 honestly just don't remember them, sitting here</p> <p>6 now.</p> <p>7 You know, I can't remember how far my</p> <p>8 conversations went with this, but one of the</p> <p>9 questions presented by the transaction was how</p> <p>10 the Lehman business would be acquired and what</p> <p>11 entity, and there are different regulatory</p> <p>12 consequences if it is acquired by a going broker</p> <p>13 dealer that is already registered than if it was</p> <p>14 acquired by a new entity that doesn't enjoy a</p> <p>15 registration.</p> <p>16 And there was thinking going on as to</p> <p>17 the various pros and cons to how the transaction</p> <p>18 was to be booked -- what entity might take it,</p> <p>19 and I recall spending some time trying to get</p> <p>20 the approval to be able to close the deal if we</p> <p>21 needed to with the Lehman business being</p> <p>22 acquired by an affiliate or subsidiary of the</p> <p>23 registered broker dealer, rather than the</p> <p>24 registered brother teller itself.</p> <p>25 That ultimately was not necessary, but TSG Reporting - Worldwide 877-702-9580</p>
Page 20	Page 21
<p>1 ROSEN</p> <p>2 I believe I spent some time dealing with that</p> <p>3 issue.</p> <p>4 Q. Do you know which entity acquired the</p> <p>5 PIM business?</p> <p>6 A. Do I know which entity acquired the</p> <p>7 PIM business. I had thought -- I thought or</p> <p>8 assumed that it was Barclays Capital, Inc.</p> <p>9 Q. Can you tell me what is or was the PIM</p> <p>10 business?</p> <p>11 MR. HUME: Object to the form.</p> <p>12 A. I believe it is a business in which</p> <p>13 investment management services are provided by</p> <p>14 Lehman brokers to customers. I don't know more</p> <p>15 than that. I don't know the business plan, I</p> <p>16 don't know the scope of it.</p> <p>17 Q. Did you understand that it was part of</p> <p>18 the investment management business, the</p> <p>19 investment management division?</p> <p>20 A. I don't know structurally how it fit</p> <p>21 into Lehman's organization.</p> <p>22 Q. Do you know whether the customers of</p> <p>23 the PIM business did any trading in derivatives?</p> <p>24 A. I don't -- I didn't have specific</p> <p>25 knowledge as to whether they did or didn't. I TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 assume it would be possible that they did.</p> <p>3 Q. In paragraph 3 of your declaration,</p> <p>4 you note the basis for your declaration in the</p> <p>5 first sentence.</p> <p>6 A. Yes.</p> <p>7 Q. And you refer to the recollection of</p> <p>8 your partners. Can you tell me to whom you are</p> <p>9 referring there?</p> <p>10 A. It would have included Mr. Davis, and</p> <p>11 Lindsee Granfield, Duane McLaughlin, David</p> <p>12 Leinwand, L-E-I-N-W-A-N-D.</p> <p>13 Dana Fleischman, Vic Lewkow, Boaz</p> <p>14 Morag. I feel like I am forgetting somebody.</p> <p>15 MR. MORAG: Washington?</p> <p>16 A. I am sorry, and Mike Mazzuchi, a</p> <p>17 partner in the Washington office. Thank you.</p> <p>18 He participated by phone, so I didn't remember</p> <p>19 him.</p> <p>20 Q. Everyone else participated in person?</p> <p>21 A. Not necessarily. In some cases -- for</p> <p>22 example, I think Duane McLaughlin was out of</p> <p>23 town and may have called in.</p> <p>24 Q. How did you go about collecting the</p> <p>25 recollection of these partners? TSG Reporting - Worldwide 877-702-9580</p>

ROSEN

A. Talking about the 30(b)(6) issues and discussing our recollection of them.

Q. Can you tell me when that happened?

MR. HUME: I am just going to object, because I think the record is unclear whether your question is about recollections reflected in the affidavit versus 30(b)(6) prep.

Q. Did you distinguish between preparing, getting your recollections for your declaration and your recollections for your deposition, or was that all part of the same process where you were preparing to testify either by way of declaration or by way of deposition?

A. Well, obviously the discussions were held earlier with respect to the declaration, sometime during the week leading up to the completion of the declaration. I don't recall whether Duane McLaughlin or Dana Fleischman participated in those earlier discussions.

Q. They did, however, participate in another round of similar discussions --

A. After the declaration.

Q. -- after the declaration.

TSG Reporting - Worldwide 877-702-9580

ROSEN

And when was that? Was that just in the last week?

A. The week before, primarily. And yesterday, but only a small subset.

Q. And how did you actually get the recollection from the partners? How did you find out what they remembered?

A. I'm not quite sure I understand the question. We talked amongst ourselves about the events and our recollections of them covered by the 30(b)(6).

Q. Did any of your partners remember things that you did not remember?

A. I would say yes, we all had different recollections.

Q. Now, you note in your declaration, paragraph 3, you say, "Where indicated, the recollection of my partners." Do you see that? It's on the second line of paragraph 3.

A. Um-hm. I do see that.

Q. Is there any recollection that any of your partners gave you that you did not set forth in this declaration?

MR. MORAG: Objection to form and TSG Reporting - Worldwide 877-702-9580

ROSEN

objection on the attorney/client privilege and work product.

MR. MAGUIRE: Are you objecting or directing the witness not to answer?

MR. MORAG: If I understand your question correctly, I'm directing him not to answer.

Q. In paragraph 4, sir, you refer to the removal of certain language. Do you see that?

A. Yes.

Q. And you note specifically the draft that it was removed from.

A. I am sorry.

Q. You refer to language -- you refer to a draft that contained that language?

A. Yes.

Q. And the draft language that you are referring to, you set that forth in paragraph 5; is that correct?

A. I am sorry, in paragraph 4, I don't see a reference to paragraph 5.

Q. That's correct. In paragraph 4, you refer to the removal of certain language.

A. Yes. I am sorry. You are referring

TSG Reporting - Worldwide 877-702-9580

ROSEN

to paragraph 5 of the declaration, not paragraph -- OK, could you repeat the question.

Q. I just want to make sure we are on the same page here. You're -- when you talk about the certain language in paragraph 4, you are referring to the language that you set forth in quotes in paragraph 5 of your declaration?

A. Yes. This is a reference to the language in 1D.

MR. MORAG: Let me note for the record that the quoted language in paragraph 5 does have ellipses and was not intended to be a full quote.

Q. As a matter of reference, we are talking about the same language?

A. Yes.

Q. At the end of paragraph 4, you say that the trustee's position is incorrect, and you say, "There was to my or my partners' knowledge never any such agreement or discussion." Do you see that?

A. Yes.

Q. Sir, was there any discussion, to your knowledge, or to the knowledge of your partners,
TSG Reporting - Worldwide 877-702-9580

ROSEN

with anyone, about the removal of the language that you discuss in paragraphs 4 and 5 of your declaration?

MR. MORAG: Object to the form, and to the extent -- you can answer to the extent you're going to talk about discussion with anyone in the Lehman side.

THE WITNESS: Yeah, I know, it's fine.

A. The only -- I -- the answer is, I don't recall the specific content of the discussion. But in response to that language, there was -- there was additional language that we drafted that was provided and identified to Lehman's attorneys explaining that this language was needed in light of the changes that had been made to 1D.

Q. And is that, sir, your recollection or the recollection of one of your partners?

A. Well, we gave -- it is our collective recollection that we drafted the additional language, and it was our recollection that we provided that in the form of a handwritten markup, and I don't recall, and I'm not sure any of my partners specifically recall, who actually
TSG Reporting - Worldwide 877-702-9580

ROSEN

handed the markup over to the Lehman side, but it was provided to the Lehman side in the form of handwritten comments.

Q. And the handwritten comments, are those the ones that included the parenthetical "property held to secure"?

A. Yes, yes.

Q. Have you seen those handwritten comments?

MR. MORAG: Time frame?

Q. At any time?

A. You mean including at the time that they were drafted?

Q. Yes.

A. The recollection of the group was that I drafted them.

Q. Do you recall actually what you did with those handwritten notes?

A. I would have given them to one of my partners.

Q. Have you seen them since the weekend when those notes were prepared?

A. No, no, I have not.

Q. Do you know whether they exist today?
TSG Reporting - Worldwide 877-702-9580

ROSEN

A. I don't know.

Q. Do you know whether, in fact, you did give them to somebody or what you did with those handwritten notes?

A. My recollection is that I handed them to one of my partners.

Q. Do you know which partner you handed them to?

A. I don't recall specifically.

Q. Do you have a general recollection?

A. I have a general recollection, it would have been Bob Davis or Duane McLaughlin or David Leinwand. It would have been one of those three.

Q. Have you asked your partners for that draft?

A. No, I haven't.

Q. Do you know whether anyone has attempted to locate that draft?

A. I don't know.

Q. Did you talk to anyone on the Lehman side concerning the insertion of the parenthetical that you were proposing in that draft?

TSG Reporting - Worldwide 877-702-9580

ROSEN

A. Did I personally speak to anyone on the Lehman side? Well, it depends upon -- I am sorry, I personally did not speak to anyone on the Lehman side.

Q. Do you know whether any of your partners spoke to anyone on the Lehman side about including that parenthetical in the clarification letter?

A. Our understanding, our recollection, Cleary's recollection, is that it would have been -- it would have been identified as a change to be made to the agreement, to the -- whoever the lawyer was on the -- representing Lehman that was handling the document.

Q. And do you know who the lawyer on the Lehman side was to whom it was handed?

A. I don't know. I don't know.

Q. And the draft that was handed to that Lehman lawyer, did it have any other handwritten changes?

A. I'm trying to remember. There were two other changes that I recall, and you will have to forgive me for being a little bit unclear about the timing or the sequencing, but

TSG Reporting - Worldwide 877-702-9580

Page 30	Page 31
<p>1 ROSEN</p> <p>2 I believe there were two other changes.</p> <p>3 One, there was language -- let me back</p> <p>4 up and ask you this question and get</p> <p>5 clarification. Are you asking me just about the</p> <p>6 language that's described in 1D, or are you</p> <p>7 asking about other changes to the clarification</p> <p>8 letter?</p> <p>9 Q. Let's get our time frame and context</p> <p>10 together first. I'm talking to you specifically</p> <p>11 about the draft that I understand from your</p> <p>12 testimony in which you, in handwriting, inserted</p> <p>13 the parenthetical that includes the words "and</p> <p>14 property held to secure."</p> <p>15 A. Yes.</p> <p>16 Q. And the question is whether that draft</p> <p>17 included any other proposed changes.</p> <p>18 A. I'd have to go back and look at the</p> <p>19 sequence of the drafts. There were two other</p> <p>20 changes that may or may not have been</p> <p>21 simultaneous. I don't know. They may have been</p> <p>22 given sequentially but have been processed by</p> <p>23 the other side as part of one turn. I don't, I</p> <p>24 don't recall.</p> <p>25 But there was a change in the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 clarification of language concerning 15c3-3,</p> <p>3 provision to add the word "or value" at the end</p> <p>4 of a sentence, and there was a sentence to</p> <p>5 clarify what had been agreed as part of the</p> <p>6 resolution of issues with DTC, that the</p> <p>7 liabilities to DTC associated with Lehman were</p> <p>8 excluded liabilities under the APA.</p> <p>9 Q. I am going to ask you again</p> <p>10 specifically about the draft in which you</p> <p>11 inserted that parenthetical "property held to</p> <p>12 secure."</p> <p>13 With respect to that draft, can you</p> <p>14 tell me what, if anything, was said about anyone</p> <p>15 on the Barclays side or the Cleary side to the</p> <p>16 person on the Lehman side who received that</p> <p>17 draft?</p> <p>18 A. No, I can't give you verbatim what</p> <p>19 would have been said, but what would ordinarily</p> <p>20 happen in that circumstance is that the changes</p> <p>21 would be identified to the other side so they</p> <p>22 could understand what was being provided to</p> <p>23 them.</p> <p>24 Q. And when you say the changes would be</p> <p>25 identified, the other side would be shown what</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 32	Page 33
<p>1 ROSEN</p> <p>2 the proposed language was?</p> <p>3 A. Yes. We did not control the</p> <p>4 documents, so Cleary did not input those</p> <p>5 changes. Those changes were put into whatever</p> <p>6 revised draft emerged in whatever time it</p> <p>7 emerged by the Lehman's counsel.</p> <p>8 Q. Other than pointing out the changed</p> <p>9 language, do you know what, if anything, was</p> <p>10 said to Lehman about the addition of that</p> <p>11 parenthetical?</p> <p>12 A. No. Not at that time.</p> <p>13 Q. When you say not at that time, is</p> <p>14 there some other time that there was a</p> <p>15 discussion --</p> <p>16 A. Not about that specific parenthetical</p> <p>17 but about the subject, there were a lot of --</p> <p>18 there were exchanges of a number of</p> <p>19 communications and documents that I think were</p> <p>20 addressed to the same issue that were exchanged.</p> <p>21 Q. I would like to go through some of</p> <p>22 them, and the first one I'd like to take is the</p> <p>23 one that you refer to in paragraph 4. And</p> <p>24 that's the draft language that you have put</p> <p>25 forth in quotes in paragraph 5.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 And if we get our sequence right,</p> <p>3 there was a draft that included this language</p> <p>4 which has an express reference to margin, and</p> <p>5 that's the language you have set forth in</p> <p>6 paragraph 5, right?</p> <p>7 A. I am sorry, could you repeat the</p> <p>8 question about this language.</p> <p>9 Q. Yes. Let's get our context right</p> <p>10 first.</p> <p>11 I invite you to look at paragraph 5</p> <p>12 and look at the draft language that you have,</p> <p>13 starting with the quotes, "any and all</p> <p>14 property."</p> <p>15 A. I am sorry, where are you in</p> <p>16 paragraph 5?</p> <p>17 Q. About midway down, the second full</p> <p>18 sentence: "The draft language accomplished this</p> <p>19 by making clear that the definition of excluded</p> <p>20 assets did not include 'any and all property,'"</p> <p>21 and it continues.</p> <p>22 A. Correct.</p> <p>23 Q. So for my next couple of questions, I</p> <p>24 am going to be asking you specifically about</p> <p>25 that language and the draft in which that</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

Page 34	Page 35
<p>1 ROSEN</p> <p>2 language was deleted or crossed out. Are you</p> <p>3 with me?</p> <p>4 A. Yes.</p> <p>5 Q. Did you see the draft in which that</p> <p>6 language was crossed out?</p> <p>7 MR. MORAG: Object to the form. I</p> <p>8 also object to the representation that all</p> <p>9 of the language was crossed out. If you</p> <p>10 want to show him the actual draft, it may be</p> <p>11 more appropriate.</p> <p>12 A. I saw a draft which included a number</p> <p>13 of changes in which language was moved to other</p> <p>14 sections and modifications were made, and those</p> <p>15 modifications included modifications to this</p> <p>16 language. Yes, I did.</p> <p>17 Q. And you refer to this as the removal</p> <p>18 of certain language in paragraph 4?</p> <p>19 A. Well, I would -- without mincing</p> <p>20 words, I would say that there was a draft</p> <p>21 prepared that dealt with some of these issues in</p> <p>22 other ways, in other provisions of the</p> <p>23 agreement.</p> <p>24 Q. Did you see the draft in which the</p> <p>25 language you quote in paragraph 5 was removed?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 A. Yes. Well, subject to the caveat as</p> <p>3 to what you mean by remove.</p> <p>4 Q. What I mean by removed is the language</p> <p>5 that you quote was deleted, it was marked as</p> <p>6 deleted?</p> <p>7 MR. MORAG: Object to the form.</p> <p>8 Q. Did you see such a draft?</p> <p>9 A. I saw a draft in which this language</p> <p>10 did not appear in this form.</p> <p>11 Q. Did this language appear in any other</p> <p>12 form in that draft?</p> <p>13 A. Some of it did and obviously some of</p> <p>14 it didn't.</p> <p>15 Q. And what part of it did not?</p> <p>16 A. I'd have to -- I would have to look at</p> <p>17 the particular draft of the agreement to answer</p> <p>18 that question. I can't recall with accurate --</p> <p>19 with accuracy what the other changes were that</p> <p>20 were made at the same time as this change was</p> <p>21 made.</p> <p>22 Q. Once you saw that draft, did you</p> <p>23 personally have any discussions with anyone on</p> <p>24 the Lehman side concerning the removal of any of</p> <p>25 this language?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 36	Page 37
<p>1 ROSEN</p> <p>2 A. As I said earlier, we prepared</p> <p>3 language, I prepared language, and that language</p> <p>4 was provided to Lehman, and they would have</p> <p>5 identified to Lehman that this language was now</p> <p>6 necessary.</p> <p>7 Q. Yes. And I understand that testimony.</p> <p>8 I was just asking whether there was any other</p> <p>9 conversation that you recalled.</p> <p>10 A. No, not that I was -- not that I am</p> <p>11 aware of.</p> <p>12 Q. Are you aware of any discussion</p> <p>13 involving any of your partners and anyone on the</p> <p>14 Lehman side --</p> <p>15 A. Actually, hang on just a second. Hang</p> <p>16 on just a second.</p> <p>17 I need to see the clarification</p> <p>18 agreement in which this language appears,</p> <p>19 because this language deals with a number of</p> <p>20 issues that were in flux at the time, some of</p> <p>21 which were the subject of discussions.</p> <p>22 There was language that addresses</p> <p>23 15c3-3, as I said earlier, that also addressed</p> <p>24 the DTC situation which had changed. And so --</p> <p>25 and there were conversations obviously among the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 parties about a number of issues that are</p> <p>3 addressed in this language.</p> <p>4 But as I said, with respect</p> <p>5 specifically to the language that was added in</p> <p>6 response in section 1(a)(ii)(C), the</p> <p>7 conversation would have been in connection with</p> <p>8 the transmittal of that language to the Lehman</p> <p>9 side.</p> <p>10 Q. And you don't recall any other</p> <p>11 communication with the Lehman side concerning</p> <p>12 the removal of this language beyond what you</p> <p>13 have told us?</p> <p>14 MR. HUME: Object to the form.</p> <p>15 MR. MORAG: Same objection.</p> <p>16 A. I think the -- other than the language</p> <p>17 itself, other than the changes that were</p> <p>18 proffered by Cleary having received a revised</p> <p>19 draft and discussions that I suspect we are</p> <p>20 going to cover relating to 15c3-3, and the</p> <p>21 discussions relating to DTCC, there were no</p> <p>22 specific conversations that we had and none that</p> <p>23 we thought were necessary, because this was part</p> <p>24 of the deal.</p> <p>25 Q. Did you have any discussions with</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

ROSEN

anyone on the Lehman side concerning margin?

MR. MORAG: Time frame?

Q. Over the weekend prior to the closing?

MR. MORAG: Objection to the form.

Objection to the term "margin."

A. Well, there were conversations -- there were e-mail communications in which I was copied and Lehman's people were copied about what was going to happen to the margin at OCC. Not just the margin but the property associated with those accounts, yes, in which OCC said, consistent with the order in their -- what was then the draft TAA that they had prepared, was going to be transferred to Barclays.

Q. Any discussions about margin with anyone on the Lehman side other than in connection with the OCC?

MR. MORAG: Objection to the form.

A. There was an e-mail to me copying Lehman, I believe, about the transfer of a certain amount of margin -- I can't remember exactly what it was -- in which Lehman was copied. I think that e-mail was from Jim McDaniel. I think the trustee's representatives
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ROSEN

A. DTC and OCC.

Q. Do you recall any discussion concerning margin at DTCC?

A. Discussing margin at DTCC? Well, there were discussions about the DTC accounts and how they were going to be handled, and those accounts would have included both proprietary positions, customers' positions, positions that may have been margined, and so indirectly, all of those discussions with DTC potentially included discussions about margin, to the extent that that was relevant.

Q. Any express reference to margin? Margin coming up in any express way in any conversation with DTC that you remember?

A. Well, in the sense that to the extent that anything constituted margin that was in there and the discussions covered those accounts, yes. But I don't remember us specifically singling out margin as a topic.

Q. Do you recall any discussions about margin at any foreign exchanges or clearinghouses?

A. Again, I don't recall conversations
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ROSEN

were also copied on that.

Q. And that's in connection -- Mr. McDaniel represented the OCC?

A. The OCC.

Q. Yes.

Other than with respect to the OCC, any discussions that you had concerning margin?

A. Well, verbal discussions?

Q. Yes.

A. I believe that there were conference calls about the clearinghouses. I think they may have been scheduled for Saturday or Sunday, and the arrangements that were going to be made and the transfers, and I believe that representatives from Lehman were on those calls. I cannot recall specifically, either the specific discussions or exactly when they occurred.

And it would have -- I think it probably included discussions about how things were going to be done in the transfer of margin and the like.

Q. What clearinghouses are you referring to?

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ROSEN

with foreign clearinghouses, but to the extent that we discussed the accounts that were going over and the credit support for them, to the extent that as part of the business that was being transferred, there were positions in those accounts, they would have been covered by the conversations.

Q. And do you recall any specific such conversations?

A. Well, there were negotiations between the parties about the business, so if you're saying that I'm taking the FCM business and if that business includes positions that are traded on foreign markets, then by definition you're talking about them as part of the same thing. If you are taking that business and customer and other deposits associated with them and assets associated with that business, then yes, you are talking about the margin indirectly, although you may not be specifically singling it out.

Q. That's what I want to do. I want to single it out.

Do you recall a specific singling out, a specific mention of either margin or guarantee
TSG Reporting - Worldwide 877-702-9580

Page 42	Page 43
<p>1 ROSEN</p> <p>2 fund deposit in any conversations other than in</p> <p>3 connection with the OCC?</p> <p>4 MR. HUME: Objection, asked and</p> <p>5 answered.</p> <p>6 A. I think I would say that the</p> <p>7 discussions about the assets that were being</p> <p>8 transferred in connection with the business and</p> <p>9 any deposits is a discussion about guarantee</p> <p>10 fund deposits and margin at those clearing</p> <p>11 organizations.</p> <p>12 Q. I understand that testimony. The</p> <p>13 question is, do you have a recollection or have</p> <p>14 you heard from any of your partners their</p> <p>15 hearing that somebody specifically referred,</p> <p>16 specifically to margin or guarantee fund deposit</p> <p>17 in any of those discussions?</p> <p>18 A. I think that the answer to your</p> <p>19 question is that in the documents, that is</p> <p>20 covered. And I'm confident that there may have</p> <p>21 been -- I shouldn't say that.</p> <p>22 I don't recall the specific</p> <p>23 conversations that we had with the clearing</p> <p>24 organizations and other lawyers who may have</p> <p>25 been involved. We may have or may not have</p> <p> TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 specifically referred to the word "margin" on</p> <p>3 those calls.</p> <p>4 But we did repeatedly exchange</p> <p>5 communications regarding the various forms of</p> <p>6 assets that would be coming over, for example,</p> <p>7 under the TAA.</p> <p>8 Q. We have been talking now about the</p> <p>9 time period over the weekend prior to the</p> <p>10 closing. I would like to just ask you if I have</p> <p>11 missed anything, if we go back to the work that</p> <p>12 you were doing from the 15th on, anytime up to</p> <p>13 that weekend. During that period, do you recall</p> <p>14 any discussions specifically in which margin or</p> <p>15 guarantee fund deposit were mentioned?</p> <p>16 A. Again, I would say in the deal</p> <p>17 documentation relating to the transfer of assets</p> <p>18 associated with those businesses that were being</p> <p>19 transferred and the agreements as to the</p> <p>20 inclusion of deposits, including customer</p> <p>21 deposits, yes, they were the subject of</p> <p>22 communications in that form.</p> <p>23 Q. And what discussion do you remember in</p> <p>24 which anyone specifically referred to margin?</p> <p>25 A. As I say, I don't recall specifically</p> <p> TSG Reporting - Worldwide 877-702-9580</p>
Page 44	Page 45
<p>1 ROSEN</p> <p>2 the content of specific conversations that I may</p> <p>3 have had at that time.</p> <p>4 Q. Is there any conversation that you're</p> <p>5 aware of where anyone on the Barclays or Cleary</p> <p>6 side had specifically discussed guarantee funds</p> <p>7 deposit?</p> <p>8 MR. MORAG: You can answer to the</p> <p>9 extent it involves someone on the Lehman or</p> <p>10 OCC or DTC side as well.</p> <p>11 A. It was never raised as an issue for</p> <p>12 discussion, because it was assumed by all</p> <p>13 parties, I think, that it was part of the</p> <p>14 business. And certainly nobody on the Lehman</p> <p>15 side ever suggested or raised the question as to</p> <p>16 its needing to be singled out from the language</p> <p>17 that otherwise covered it.</p> <p>18 Q. Now, when you saw that the draft</p> <p>19 language referring to margin and guarantee fund</p> <p>20 deposit had been removed from the draft, did</p> <p>21 that suggest to you that there needed to be a</p> <p>22 discussion about this or that someone on the</p> <p>23 Lehman side was suggesting that they had</p> <p>24 different assumptions or different</p> <p>25 understandings from what you had?</p> <p> TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 MR. MORAG: Objection to form.</p> <p>3 Compound.</p> <p>4 A. As I mentioned, the language that came</p> <p>5 out was actually not specific to OTC -- to</p> <p>6 listed derivatives or listed derivatives</p> <p>7 customers. It was language that sort of</p> <p>8 addressed a variety of issues.</p> <p>9 And so I would not have drawn any</p> <p>10 necessary inference as to what specifically the</p> <p>11 concerns were that, from the Lehman side, were</p> <p>12 being addressed. There were changes to the deal</p> <p>13 that needed to be addressed in that language.</p> <p>14 There were changes in the agreements that</p> <p>15 related to the handling of -- I'm sorry. There</p> <p>16 were changes in the language that was</p> <p>17 documenting, for lack of a better reference, the</p> <p>18 15c3-3 treatment, and indeed the fact that the</p> <p>19 DTC arrangement had essentially changed.</p> <p>20 So it was clear that the language that</p> <p>21 was modified needed to be modified. As to</p> <p>22 whether or not that modification signaled a</p> <p>23 specific view about the treatment of credit</p> <p>24 support for exchange-traded derivatives, you</p> <p>25 would never know until you clarified it with</p> <p> TSG Reporting - Worldwide 877-702-9580</p>

<p style="text-align: right;">Page 46</p> <p>1 ROSEN</p> <p>2 your own language, and to my knowledge, nobody</p> <p>3 on the Lehman side, when presented with that</p> <p>4 language, expressed any surprise or objection.</p> <p>5 So I think the clear inference is that</p> <p>6 it was not a surprise to them, and therefore, we</p> <p>7 inferred that there was no intent to communicate</p> <p>8 to us that they didn't think it was part of the</p> <p>9 deal, or anybody else who had the opportunity to</p> <p>10 see those changes, which would have been all the</p> <p>11 signatories.</p> <p>12 Q. So you didn't feel there was any need</p> <p>13 to go up and have a specific discussion with the</p> <p>14 folks on the Lehman side about the removal of</p> <p>15 the language?</p> <p>16 A. I didn't think that there was anything</p> <p>17 more that needed to be done than to provide to</p> <p>18 them the language that we thought was</p> <p>19 appropriate in order to clarify what the deal's</p> <p>20 agreement was with respect to the treatment of</p> <p>21 that credit support, that property. That is the</p> <p>22 way we ordinarily communicate in a transaction</p> <p>23 of this type.</p> <p>24 Q. In the beginning of the, of your</p> <p>25 paragraph 5, you note that the draft language at</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 47</p> <p>1 ROSEN</p> <p>2 issue was an attempt to accurately document the</p> <p>3 business deal. Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. What is the business deal that you are</p> <p>6 referring to there?</p> <p>7 A. Here, that Barclays was acquiring the</p> <p>8 exchange-traded businesses, exchange-traded</p> <p>9 derivatives businesses of Lehman and the assets</p> <p>10 and customer deposits and other deposits that</p> <p>11 were part of that business.</p> <p>12 Q. Are you aware of whether there was any</p> <p>13 business discussion between the Barclays and</p> <p>14 Lehman folks concerning specifically the</p> <p>15 acquisition of either margin or clearing fund,</p> <p>16 guarantee fund deposit?</p> <p>17 MR. HUME: Objection, asked and</p> <p>18 answered.</p> <p>19 MR. MORAG: Objection, form.</p> <p>20 A. I don't know whether there were or</p> <p>21 weren't. I assume as part of the negotiation of</p> <p>22 the deal leading up to the description, the</p> <p>23 documentation of it, that it was implicit in</p> <p>24 those discussions.</p> <p>25 Q. You go on to say that the draft</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
<p style="text-align: right;">Page 48</p> <p>1 ROSEN</p> <p>2 language accomplished this, the beginning of the</p> <p>3 next sentence. Do you see that, sir?</p> <p>4 A. Um-hm.</p> <p>5 Q. Can you tell me, what did the draft</p> <p>6 language accomplish?</p> <p>7 A. What did the -- in relation to the</p> <p>8 exchange-traded derivatives, that it -- what</p> <p>9 it -- what this -- I am sorry, let me see.</p> <p>10 It included language that, as I said,</p> <p>11 covered a wide variety of things, but also would</p> <p>12 have provided -- I am sorry, included language</p> <p>13 that clarified that the property of any kind</p> <p>14 that was basically held by any of these or in</p> <p>15 any of these forms, was not an excluded asset</p> <p>16 under the terms of the deal documentation.</p> <p>17 Q. And in the quotes, you have "any and</p> <p>18 all property," and then you have square</p> <p>19 parenthesis, "including cash." Do you see that?</p> <p>20 A. Um-hm.</p> <p>21 Q. Why did you include those square</p> <p>22 brackets around the words "including cash"?</p> <p>23 A. Just as a clarification. It's not</p> <p>24 necessary, but just for the sake of -- for the</p> <p>25 avoidance of any lack of clarity.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 49</p> <p>1 ROSEN</p> <p>2 Q. Why did you not include those words in</p> <p>3 the handwritten parenthetical that you provided?</p> <p>4 A. The answer to that question -- I'm</p> <p>5 going to try to answer this without going into</p> <p>6 attorney/client privileges, but the answer to</p> <p>7 that question is because we also came to believe</p> <p>8 that this was not the best location for</p> <p>9 clarifying this, because this got caught up in</p> <p>10 provisions dealing with, you know, what the</p> <p>11 parties understood to be an exception to the</p> <p>12 excluded assets, and excluded assets included</p> <p>13 cash. So we wanted to make sure in this</p> <p>14 provision that it was relevant.</p> <p>15 But on the other hand, we realized</p> <p>16 that providing this clarification in an</p> <p>17 exclusion to the -- to an exclusion was not the</p> <p>18 clearest way to do it and, therefore, we decided</p> <p>19 in response, rather than go back into this</p> <p>20 provision and start wordsmithing, which we</p> <p>21 didn't have the time to do, we would just make</p> <p>22 it abundantly clear, in as concise words as we</p> <p>23 could, what the purchased assets included in</p> <p>24 relation to that business.</p> <p>25 Q. And you made it abundantly clear by</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

Page 50	Page 51
<p>1 ROSEN</p> <p>2 putting the parenthetical that made clear it</p> <p>3 included property held to secure?</p> <p>4 A. Yes.</p> <p>5 Q. And my question is, why did you not</p> <p>6 include, beside "property," the words "including</p> <p>7 cash"?</p> <p>8 A. Didn't think it was necessary. At</p> <p>9 this point in time, it was 5 or 6 o'clock in the</p> <p>10 this morning. We were extremely concerned about</p> <p>11 whether we were going to run out of time in</p> <p>12 terms of the objective of having this deal</p> <p>13 signed in time to be announced early in the</p> <p>14 morning, so as to avoid any negative sort of</p> <p>15 market reaction to the deal not being announced.</p> <p>16 And we were trying in as concise a</p> <p>17 form as possible and as clear a form as possible</p> <p>18 to get it down and not to get embroiled in</p> <p>19 parsing words.</p> <p>20 So I, I mean did I have -- would I</p> <p>21 have preferred to have had hours to have sat</p> <p>22 down and drafted it and perfected it? I</p> <p>23 certainly would. But I thought it was</p> <p>24 absolutely clear that if we said "any property,"</p> <p>25 that it would include cash, noncash, securities,</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 nonsecurities, whether or not it was held by</p> <p>3 Lehman, by a clearing organization, wherever it</p> <p>4 was, and whoever was holding it and whatever its</p> <p>5 character might be.</p> <p>6 I think for the purpose of clarifying</p> <p>7 what might have been a subject of dispute in</p> <p>8 light of the deletion of that language, we</p> <p>9 didn't think it was actually necessary to</p> <p>10 include the language, but we were concerned</p> <p>11 about the sort of negative inferences that could</p> <p>12 arise, and so we thought because it was an</p> <p>13 important point for the deal that we would make</p> <p>14 it as clear as we could, as concisely as we</p> <p>15 could.</p> <p>16 Q. You had had a discussion, and we will</p> <p>17 get to this a little bit later, on the subject</p> <p>18 of whether cash in the 15c3 account could be</p> <p>19 transferred to Barclays. You recall that?</p> <p>20 A. Yes.</p> <p>21 Q. And in connection with that, some of</p> <p>22 the Lehman people at least took the position</p> <p>23 that cash could not be properly transferred?</p> <p>24 A. I wouldn't describe what they said as</p> <p>25 that. I would say, this was part of the purpose</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 52	Page 53
<p>1 ROSEN</p> <p>2 of the clarification letter. There were</p> <p>3 provisions about deposits, customer deposits.</p> <p>4 There were provisions in the excluded assets</p> <p>5 provisions of the APA regarding bank accounts.</p> <p>6 And I think it was clear to us that the 15c3-3</p> <p>7 assets were assets of the business that we were</p> <p>8 buying.</p> <p>9 I would describe what I heard at least</p> <p>10 as being an expression of concern as to whether</p> <p>11 in light of what had been said to the court</p> <p>12 about bank deposits, whether or not if we were</p> <p>13 going to include cash in bank deposits -- that</p> <p>14 would be in bank deposits, whether some</p> <p>15 additional steps might need to be taken, which</p> <p>16 would have been inconsistent with completing the</p> <p>17 deal and being able to announce it.</p> <p>18 But I don't recall anybody saying that</p> <p>19 it couldn't be done or that it wasn't part of</p> <p>20 the deal or that it wouldn't be permitted or</p> <p>21 that it wasn't part of the sale order. There</p> <p>22 was, I would have said, a decision taken to</p> <p>23 avoid the issue by limiting the account assets.</p> <p>24 MR. HUME: We have been going for</p> <p>25 about an hour. Can we have a break?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 MR. MAGUIRE: Sure. If we can just</p> <p>3 wrap up this. It might take a couple of</p> <p>4 minutes.</p> <p>5 Q. Were you at the sale hearing?</p> <p>6 A. Only during the, for lack of a better</p> <p>7 word, the intermission. It went into recess and</p> <p>8 I was there. I was not actually there at the</p> <p>9 time that it was --</p> <p>10 Q. Do you know whether the court was told</p> <p>11 anything about bank deposits as opposed to cash?</p> <p>12 A. No, I don't know. I just know that</p> <p>13 the issue about it was raised, and under the</p> <p>14 circumstances, people were willing to eliminate</p> <p>15 the issue, rather than -- because I think the</p> <p>16 feeling was that if we didn't close before the</p> <p>17 Monday open, there may have been greater</p> <p>18 jeopardy to the deal.</p> <p>19 Q. In order to avoid the issue, Barclays</p> <p>20 agreed that it would not take any of the cash in</p> <p>21 the Wells Fargo account that was part of the</p> <p>22 15c3 account?</p> <p>23 MR. MORAG: Objection to the form.</p> <p>24 A. I would say Barclays agreed to include</p> <p>25 language in the clarification letter that only</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

Page 54	Page 55
<p>1 ROSEN</p> <p>2 called out the transfer of a certain amount of</p> <p>3 securities associated with the 15c3 account, or</p> <p>4 if those weren't available, other securities of</p> <p>5 similar value.</p> <p>6 Q. And did not call out the 1 billion</p> <p>7 dollars in cash that was at Wells Fargo?</p> <p>8 A. Not in the clarification provision,</p> <p>9 correct.</p> <p>10 Q. Now, given those discussions, and the</p> <p>11 decision by everyone to avoid the cash issue,</p> <p>12 did it occur to you that the words "including</p> <p>13 cash" should be included in the parenthetical</p> <p>14 when you described property held to secure?</p> <p>15 A. No. No, because I thought there was a</p> <p>16 clear distinction between deposits and customer</p> <p>17 deposits and LBI cash in its bank accounts.</p> <p>18 MR. MAGUIRE: This is a good time for</p> <p>19 a break.</p> <p>20 (Recess)</p> <p>21 MR. MORAG: I should just put on the</p> <p>22 record, to the extent, Mr. Maguire, you're</p> <p>23 curious, Cleary did search for all</p> <p>24 documents, including any handwritten notes,</p> <p>25 and our production does not include them</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 because we were not able to find the markup</p> <p>3 that you asked about in your examination.</p> <p>4 MR. MAGUIRE: I appreciate that.</p> <p>5 MR. HUME: I should also state we have</p> <p>6 looked for it in the Weil production, have</p> <p>7 not found it. I'm double checking.</p> <p>8 THE WITNESS: Which would have been</p> <p>9 consistent with our handing it to Weil to</p> <p>10 deal with the document.</p> <p>11 BY MR. MAGUIRE:</p> <p>12 Q. Sir, before the break, we were in</p> <p>13 paragraph 5 of your declaration and we were</p> <p>14 talking about the -- what you referred to as the</p> <p>15 business deal in the first and second lines of</p> <p>16 that declaration.</p> <p>17 Was it your understanding that the</p> <p>18 business deal was documented in the asset</p> <p>19 purchase agreement?</p> <p>20 A. It was my understanding that the deal</p> <p>21 was documented in the asset purchase agreement,</p> <p>22 the first amendment in the clarification letter.</p> <p>23 Q. The language that we have been talking</p> <p>24 about in the quotes at the bottom of page 2 of</p> <p>25 your declaration, starting with "any and all</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 56	Page 57
<p>1 ROSEN</p> <p>2 property," did you draft that language?</p> <p>3 A. I'm sorry, could you --</p> <p>4 MR. MORAG: Starting here.</p> <p>5 Q. Paragraph 5 on page 2 and starting</p> <p>6 with the language we have been talking about</p> <p>7 that starts with the quotation "any and all</p> <p>8 property."</p> <p>9 A. I was involved in its drafting, but I</p> <p>10 think it was, like many things, a bit of a group</p> <p>11 process.</p> <p>12 Q. So who were the members of this group?</p> <p>13 A. The members of the group on the Cleary</p> <p>14 side would have been me, Dana Fleischman, Bob</p> <p>15 Davis, Duane McLaughlin, possibly David</p> <p>16 Leinwand. Whether -- the extent to which any of</p> <p>17 one of them was specifically involved in</p> <p>18 particular language, I don't recall.</p> <p>19 Q. So this was a collective, this</p> <p>20 language was a collective drafting effort of a</p> <p>21 number of Cleary lawyers?</p> <p>22 A. Yes, although I would say probably</p> <p>23 principally me.</p> <p>24 Q. When it was proposed to the Lehman</p> <p>25 side, your understanding was that this language</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 accurately reflected the business deal?</p> <p>3 A. Yes.</p> <p>4 Q. Did you ever ask anyone to identify</p> <p>5 who had negotiated this specific part of the</p> <p>6 business deal?</p> <p>7 MR. MORAG: Object to the form.</p> <p>8 I will let you answer if it is -- as</p> <p>9 to the yes or no, but if it involves a</p> <p>10 privileged communication, do not go into the</p> <p>11 substance of the communication.</p> <p>12 A. I assume it was negotiated by the</p> <p>13 principals who negotiated the deal that was</p> <p>14 ultimately documented in the APA and these</p> <p>15 documents. I was not privy to those specific</p> <p>16 negotiations.</p> <p>17 Q. Do you know the names of the</p> <p>18 individuals who negotiated the deal specifically</p> <p>19 on this point?</p> <p>20 A. I don't know who participated in each</p> <p>21 discussion. I know that Archibald Cox and</p> <p>22 Michael Klein and Jonathan Hughes and Rich Ricci</p> <p>23 were involved in the negotiations, but I did</p> <p>24 not -- I don't have personal knowledge of those</p> <p>25 exchanges.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

ROSEN

Q. Do you know who was involved on the Lehman side specifically with respect to the business deal that's -- that you describe in --

A. Whoever was in those conversations, and I wasn't present, so I couldn't identify them.

Q. Did the business deal ever change? I'm talking now specifically about that part of the business deal that's the subject of the language you and your group drafted and that you put forth in paragraph 5 of your declaration. Did that part of the business deal change anytime after the discussion of the asset purchase agreement?

MR. MORAG: Object to the form.
You can answer.

A. I would say that the only respect in which it changed was reflected in the 3-3 provisions in which Barclays agreed in essence to relinquish the claims specifically in the clarification letter to the -- the non-769 million or whatever it was of securities in the 15c3-3 account.

There were aspects in which the deal
TSG Reporting - Worldwide 877-702-9580

ROSEN

maintained by or on behalf of." Can you tell me what is the distinction here between an account maintained by as opposed to an account maintained on behalf of LBI?

A. Well, Lehman, when Lehman conducts -- when a broker dealer conducts business with a customer or on behalf of an affiliate or for its own proprietary account, it will reflect, it will be required to reflect on its own books and records accounts which are its accounts. Those assets may be held by custodian banks, other banks, clearing agencies, clearing organizations.

So this is meant to not be limited to those specific alternatives to the account as it is described on the books of the carrying broker, to carry anything, wherever it may be, if it was to secure obligations in essence for which BCI was going to become responsible.

Q. And you go on to say, "for which Barclays shall become responsible as of the closing." What were you referring to there?

A. At this point, I believe it was unclear how the DTCC accounts were going to be
TSG Reporting - Worldwide 877-702-9580

ROSEN

was evolving as it contemplated it would at the sale hearing in relation to the DTC arrangements. That is all that comes to mind.

Q. And specifically with respect to assets that were related to derivatives, margin or clearing funds deposit, did the deal change anytime after -- the business deal change at any time after the execution of the asset purchase agreement?

A. I'm not aware that it ever changed. only that it was clarified.

Q. You refer, at the bottom of page 2 and top of page 3 of your declaration, to the obligations of LBI or any other person. To whom are you referring with the words "any other person"?

A. It could be -- well, without limitation on what it might include, the two obvious inclusions would have been the obligations of LBI or any affiliate or any customer who was involved as part of these transactions or part of the business that was being transferred.

Q. Then you say, "in an account
TSG Reporting - Worldwide 877-702-9580

ROSEN

handled, but it was clear that, for example, to the extent that Barclays was a clearing, either a clearing member of a clearing organization which carried accounts, or was a clearing broker carrying positions with other clearing brokers who were clearing members of other exchanges on which positions may have been carried in or out of the United States, whatever the form, that would have been covered.

The point was that if there was credit support available and Barclays was on the hook and potentially subject to liabilities associated with that, that all of those assets would be available.

Q. And were Barclays -- in the case of a foreign account, where Barclays was not taking -- stepping into the shoes of Lehman and taking over from Lehman, the obligations to a foreign exchange or clearing corporation, it would get the exchange-traded derivatives but not the associated assets?

MR. MORAG: Object to form.

A. Not at all. Not at all. That's not what I am saying at all.

TSG Reporting - Worldwide 877-702-9580

Page 62	Page 63
<p>1 ROSEN</p> <p>2 In fact, if BCI was going to be in the</p> <p>3 chain of financial responsibility for those</p> <p>4 positions, whether it was because they were</p> <p>5 taking the account or they were carrying the</p> <p>6 account or they were carrying the account with a</p> <p>7 foreign clearinghouse or another broker who was</p> <p>8 in the clearinghouse, that that would be</p> <p>9 included.</p> <p>10 Q. And that's what I am trying to</p> <p>11 understand. Where the flip side of that</p> <p>12 happens, where Barclays was not taking the</p> <p>13 account, did you consider what happens when</p> <p>14 Barclays does not take the account at a foreign</p> <p>15 exchange?</p> <p>16 A. I think that language is dealt with</p> <p>17 elsewhere. And I need the clarification letter</p> <p>18 to --</p> <p>19 Q. So you believe there is a separate</p> <p>20 provision that deals with when Barclays takes</p> <p>21 exchange-traded derivatives --</p> <p>22 A. I don't recall the specific language.</p> <p>23 I would prefer to --</p> <p>24 MR. MORAG: You have to --</p> <p>25 A. I am sorry, I prefer to look at the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 clarification letter.</p> <p>3 Q. Well, we will certainly get to the</p> <p>4 clarification letter, but your understanding is</p> <p>5 that that's not covered by this language; is</p> <p>6 that correct?</p> <p>7 A. Well, there are ellipses in here.</p> <p>8 This is a very long provision, and I'm not</p> <p>9 prepared to summarize all the things that it</p> <p>10 does or does not cover in this abbreviated form.</p> <p>11 So if you want me to tell you what it covers,</p> <p>12 you are going to have to give me the provisions</p> <p>13 so that I can look at them.</p> <p>14 Q. Sounds fair. I think it is Exhibit</p> <p>15 25.</p> <p>16 MR. MORAG: Mr. Maguire, if I recall</p> <p>17 correctly, Exhibit 25 is the executed</p> <p>18 clarification letter. You have been asking</p> <p>19 him questions about language which was not</p> <p>20 included in the executed clarification</p> <p>21 letter. So I'm not sure that's going to be</p> <p>22 responsive to his request.</p> <p>23 Q. That may be fair. Maybe we should go</p> <p>24 through the drafts.</p> <p>25 A. I think we should look at the draft</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 64	Page 65
<p>1 ROSEN</p> <p>2 that has this --</p> <p>3 MR. MORAG: Only if you have questions</p> <p>4 about the draft. If you have questions</p> <p>5 about the final, show him the final.</p> <p>6 Q. Why don't we do that. We will go</p> <p>7 through the drafts and then we will take a look</p> <p>8 at the final.</p> <p>9 Before we do that, let me ask you to</p> <p>10 scroll down to the end of that paragraph, the</p> <p>11 bottom of paragraph 5. You refer there to,</p> <p>12 "which is consistent with the discussions of the</p> <p>13 lawyers from both sides."</p> <p>14 Do you see that reference to those</p> <p>15 discussions?</p> <p>16 A. Um-hm.</p> <p>17 Q. Can you tell me what discussions you</p> <p>18 are referring to there?</p> <p>19 A. The discussions negotiating the terms</p> <p>20 of the deal, which were that Lehman sold the</p> <p>21 exchange-traded derivatives business and all</p> <p>22 assets associated with it and all deposits and</p> <p>23 customer deposits. But basically it is</p> <p>24 consistent with the treatment in the</p> <p>25 documentation and therefore the negotiation of</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 the documentation relating to what it was that</p> <p>3 Barclays was getting.</p> <p>4 Q. Is there any specific conversation</p> <p>5 among any two or more lawyers that you were</p> <p>6 intending to refer to in that last sentence of</p> <p>7 paragraph 5?</p> <p>8 A. I was not present in the negotiations</p> <p>9 of the original provisions in the APA that this</p> <p>10 clarifies.</p> <p>11 Q. And you're not aware of any</p> <p>12 conversations that your partners have told you</p> <p>13 they remember from the negotiation of the</p> <p>14 original deal?</p> <p>15 What I am trying to clarify is just,</p> <p>16 did you have in mind when you wrote this</p> <p>17 reference to discussions something either that</p> <p>18 you remembered or something that one of your</p> <p>19 partners told you about?</p> <p>20 A. No. I'm referring to what would have</p> <p>21 had to have been discussed if the parties were</p> <p>22 to come to the terms on which they signed the</p> <p>23 APA.</p> <p>24 Q. I am going to show you a document that</p> <p>25 has previously been marked as Exhibit 30. Do</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

1 ROSEN

2 **you recognize this document?**

3 A. Looking at the first page, no. I
4 don't believe I was copied -- yes, I am. OK.

5 I don't recall looking at this
6 document, but it is possible that I saw it at
7 some point.

8 **Q. If you look, sir, at paragraph 11, you**
9 **will see that the language there includes a**
10 **paragraph on derivatives. Do you see that?**

11 A. Yes.

12 **Q. And there is a reference to Exhibit A.**
13 **Did you ever see an Exhibit A?**

14 A. I don't recall whether I saw
15 Exhibit A.

16 MR. MAGUIRE: I would ask your counsel
17 to maybe let us know if you were able to
18 find an Exhibit A in the Cleary production.

19 MR. MORAG: If we did, we would have
20 produced it. I certainly have never seen
21 it. It would not be the first time in this
22 deal that someone anticipated an Exhibit A
23 that was never completed.

24 **Q. Mr. Rosen, I will show you a document**
25 **previously marked as Exhibit 36. Have you ever**

TSG Reporting - Worldwide 877-702-9580

1 ROSEN

2 **seen this draft, sir?**

3 A. I can't be sure. I would have to look
4 at it against other drafts to know.

5 **Q. If you look at the markup version.**

6 A. Is that in here?

7 MR. MORAG: At the end.

8 **Q. About halfway through.**

9 A. OK.

10 **Q. On the first page of the markup, if**
11 **you look down at the bottom, you will see there**
12 **is a provision that refers to a clearance box.**
13 **Do you see that?**

14 A. Let me just look at it.

15 **Q. Sure.**

16 A. Yes, I see the provision, clause B.

17 **Q. Did you understand that Barclays was**
18 **acquiring assets at the DTC clearance box?**

19 MR. MORAG: Object to the form.

20 A. I understood that they were acquiring
21 all the assets of the business, including
22 clearance box assets, some of which were at DTC
23 and some of which were not at DTC. That was my
24 understanding at the time. All of the assets of
25 the business that was being acquired other than
TSG Reporting - Worldwide 877-702-9580

1 ROSEN

2 the defined excluded assets.

3 **Q. If you turn to page 4, you will see a**
4 **section 8. It refers to DTC arrangements.**

5 MR. MORAG: There is two section 8s.
6 I guess you mean the second one.

7 **Q. The second one. Yes.**

8 A. Um-hm, I do see it.

9 **Q. Did you have an understanding at any**
10 **time that Barclays was contemplating assuming**
11 **all of Lehman's obligations to the Depository**
12 **Trust and Clearing Corporation?**

13 A. I'm not exactly sure what you mean by
14 contemplating, but the question as to how the
15 DTCC situation would be handled and documented
16 was the subject of negotiations. There were a
17 range of potential outcomes, one of which could
18 have included assuming those rights and
19 obligations, but there were concerns associated
20 with the liabilities to which they had not
21 contemplated they would be subject based on the
22 liabilities that were intended to be excluded
23 but which they would become responsible for if
24 they just simply assumed the liabilities in the
25 accounts.

TSG Reporting - Worldwide 877-702-9580

1 ROSEN

2 So at this point in time, I don't
3 think there was -- it was -- I don't think
4 people were proceeding on the Barclays side
5 necessarily on the assumption they were going to
6 be doing this, but this was an open issue.

7 **Q. I am going to show you a document that**
8 **has previously been marked as Exhibit 49.**

9 A. Is this blacklined --

10 **Q. Why don't we follow the blacklined.**
11 **Do you recall seeing this document**
12 **before?**

13 A. It looks like a draft I may have seen.
14 Again, without, you know, comparing them, I
15 can't be sure.

16 **Q. Was that a protocol that Cleary**
17 **followed at the top of the blackline, where it**
18 **says "CGSH comments" and the date and time?**

19 MR. HUME: Object to the form.

20 MR. MORAG: Same objection.

21 A. I don't know that it is a practice
22 that's uniformly followed, but when there is
23 enough time and the comments are transmitted in
24 this way, you might do it just because there
25 could otherwise be confusion about the timing of
TSG Reporting - Worldwide 877-702-9580

Page 70	Page 71
<p>1 ROSEN</p> <p>2 drafts and what followed what.</p> <p>3 But it would not have been the</p> <p>4 protocol, for example, in circumstances where,</p> <p>5 as happened frequently in this deal, comments</p> <p>6 were just scribbled on a piece of paper and sort</p> <p>7 of shared and then ultimately inputted.</p> <p>8 Q. Do you see at the bottom of the first</p> <p>9 page, there is a reference to certain assets and</p> <p>10 the clearance box language has been removed? Do</p> <p>11 you see that?</p> <p>12 MR. HUME: Object to the</p> <p>13 characterization of the document.</p> <p>14 MR. MORAG: There is no question</p> <p>15 pending other than to refer your attention</p> <p>16 to the first page.</p> <p>17 A. I'm just trying to understand the</p> <p>18 entire document. OK. Yes.</p> <p>19 Q. At the bottom where the clearance box</p> <p>20 language was on the bottom of page 1, do you see</p> <p>21 that?</p> <p>22 A. Yes, I do.</p> <p>23 Q. You will see that Cleary has added the</p> <p>24 language, "or any portion of such securities."</p> <p>25 See that, the last two lines on the page?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 A. Um-hm, yes, I do.</p> <p>3 Q. Just from your previous testimony, I</p> <p>4 understood your understanding was that Barclays</p> <p>5 was acquiring all of the assets at DTC. So can</p> <p>6 you explain to me why Barclays wanted to</p> <p>7 negotiate the right to acquire only a portion</p> <p>8 instead of all of the assets?</p> <p>9 MR. MORAG: Object to the form, and</p> <p>10 objection, mischaracterizes his testimony.</p> <p>11 A. I didn't say that they were buying all</p> <p>12 the assets at DTCC. I said they were acquiring</p> <p>13 the assets of the business.</p> <p>14 And in terms of this, it looks to me</p> <p>15 as though the portion of this, the change that</p> <p>16 was made here, was that to the extent there was</p> <p>17 any discretion not to take them, that discretion</p> <p>18 enabled them to decide when they were going to</p> <p>19 take all or just a portion of them. It wasn't</p> <p>20 an all or nothing decision.</p> <p>21 I think there was not -- it was not</p> <p>22 entirely clear -- I'll just leave it at that.</p> <p>23 Q. And can you tell me why it was</p> <p>24 important to have the ability to take a portion</p> <p>25 of the assets, instead of all of the assets?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 72	Page 73
<p>1 ROSEN</p> <p>2 MR. HUME: I am going to object to the</p> <p>3 lack of foundation and to the extent it</p> <p>4 calls for speculation.</p> <p>5 MR. MORAG: Same objection.</p> <p>6 A. I wasn't directly involved in this,</p> <p>7 but my recollection is that this provision</p> <p>8 relating to the ability not to take some</p> <p>9 clearance box assets, I'm not sure that we were</p> <p>10 the source of that, but I think this provision</p> <p>11 merely provided more flexibility that to the</p> <p>12 extent that there was discretion to take or not,</p> <p>13 that was a discretion to take or not in whole or</p> <p>14 in part.</p> <p>15 Q. And were you privy to any of the</p> <p>16 discussions about why it was important to have</p> <p>17 that flexibility?</p> <p>18 A. I was not privy to those discussions,</p> <p>19 and I don't know whether there were discussions</p> <p>20 or whether it was a provision that was suggested</p> <p>21 by the other side, or whether we really cared</p> <p>22 about it, given that it provided a flexibility</p> <p>23 that we didn't have any obligation to, that</p> <p>24 Barclays didn't have any obligation to exercise</p> <p>25 or not.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 Q. If you turn to the top of the next</p> <p>3 page, you will see item C on the second line</p> <p>4 refers to exchange-traded futures. Do you know</p> <p>5 why the reference here is to exchange-traded</p> <p>6 futures?</p> <p>7 A. This was, I think -- this was a</p> <p>8 placeholder. I think the purpose of putting</p> <p>9 this in brackets was that people wanted to put a</p> <p>10 marker down that they needed to consider whether</p> <p>11 anything needed to be addressed to those issues,</p> <p>12 and if so, what, and people didn't know exactly</p> <p>13 what it would have been appropriate to have</p> <p>14 included here or whether it was necessary to</p> <p>15 include anything, but so as not to drop the</p> <p>16 issue, I think the bracketed language was</p> <p>17 included, and I don't think there was any</p> <p>18 particular attention paid to exactly how those</p> <p>19 issues were put on the table.</p> <p>20 Q. And then if you look down at item D,</p> <p>21 you will see the exception, exclusion from the</p> <p>22 exclusion.</p> <p>23 A. Right. I see that.</p> <p>24 Q. And this includes the language that</p> <p>25 you referred to in your declaration?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

Page 74	Page 75
<p>1 ROSEN</p> <p>2 A. It seems to. Again, I can't be sure</p> <p>3 that all of these words are exactly the same</p> <p>4 without verifying, but it looks like the</p> <p>5 provision that was just described.</p> <p>6 Q. If you turn to the next page, page 4,</p> <p>7 and the section 8, do you see the same language</p> <p>8 appearing in that section?</p> <p>9 MR. MORAG: As what?</p> <p>10 MR. MAGUIRE: As well.</p> <p>11 MR. MORAG: No. As what? Same as</p> <p>12 what?</p> <p>13 Q. Same as the language that you quote in</p> <p>14 paragraph 5 of your declaration.</p> <p>15 A. I see some similar wording. I don't</p> <p>16 think it is exactly the same.</p> <p>17 Q. If we turn back to page 2, to that</p> <p>18 section D, as in David.</p> <p>19 MR. HUME: Section 2? Page 2.</p> <p>20 Q. At the beginning of D, it specifically</p> <p>21 says that "excluded assets shall not include any</p> <p>22 and all property of any customer." Do you see</p> <p>23 that?</p> <p>24 A. I see that it says "except as</p> <p>25 otherwise specified in the definition of</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 purchased assets, excluded assets shall not..."</p> <p>3 Q. And what was the point of this</p> <p>4 reference to customer property?</p> <p>5 A. The purpose of this language was to</p> <p>6 insure that to the extent that -- what do you</p> <p>7 call it -- to insure that to the extent that, in</p> <p>8 connection with any account that was</p> <p>9 transferred, there were liabilities associated</p> <p>10 with them at the property that secured those</p> <p>11 obligations and protected those liabilities,</p> <p>12 were included in the deal, not excluded by any</p> <p>13 other provision.</p> <p>14 Q. And you're talking about all the</p> <p>15 customer accounts that were transferred from</p> <p>16 Lehman to Barclays?</p> <p>17 A. Yes, this refers to customers whose</p> <p>18 accounts were being transferred.</p> <p>19 Q. You see a little further down, there</p> <p>20 is a reference to 15c3-3?</p> <p>21 A. By the way, it says "or."</p> <p>22 Q. Right.</p> <p>23 A. "Maintained by or on behalf of," "for</p> <p>24 which they become responsible," parsing down.</p> <p>25 So whether or not the account was</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 76	Page 77
<p>1 ROSEN</p> <p>2 being transferred, if somehow Lehman -- Barclays</p> <p>3 was to assume responsibility for that, that</p> <p>4 would also be included. It didn't have to</p> <p>5 necessarily be a transferred account.</p> <p>6 Q. So you're saying it either had to be a</p> <p>7 transferred account or an account for which</p> <p>8 Barclays became responsible?</p> <p>9 A. You know, I hate to say this, but this</p> <p>10 sentence is incomplete. I see that it says</p> <p>11 maintained, A, and then I don't see a clause B.</p> <p>12 So it is not impossible that there was other</p> <p>13 language that should have been included here</p> <p>14 that wasn't.</p> <p>15 But in terms of the language that's in</p> <p>16 here, I think the concept was, if we were taking</p> <p>17 accounts or would otherwise become responsible</p> <p>18 for them, that they would be ours, and if they</p> <p>19 were otherwise purchased assets, they would be</p> <p>20 ours. Any of those three categories would have</p> <p>21 been encompassed.</p> <p>22 Q. And the 15c3 account is mentioned here</p> <p>23 too, right?</p> <p>24 A. Yes.</p> <p>25 Q. And you understood that the entire</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 15c3 account was being transferred to Barclays;</p> <p>3 is that correct?</p> <p>4 MR. MORAG: Objection, time frame.</p> <p>5 Q. The time frame was as of this draft.</p> <p>6 A. That is what this draft seems to</p> <p>7 provide.</p> <p>8 Q. Now, we discussed earlier about how</p> <p>9 Barclays was getting the assets associated with</p> <p>10 the accounts when it was becoming responsible</p> <p>11 for the accounts, and I had asked you about</p> <p>12 foreign exchanges where Barclays was not taking</p> <p>13 over the accounts, it was not stepping into the</p> <p>14 shoes of Lehman, and the question I asked you</p> <p>15 then, and I would like to re-pose to you now --</p> <p>16 A. I would like to just stop you and say,</p> <p>17 I'm not aware of Lehman not -- of there being a</p> <p>18 distinction in the context of the</p> <p>19 exchange-traded derivatives between, you know,</p> <p>20 U.S. listed derivatives and non-U.S. listed</p> <p>21 derivatives. So you can postulate that, but I'm</p> <p>22 not necessarily agreeing that that's the right</p> <p>23 characterization.</p> <p>24 Q. I'm not characterizing derivatives</p> <p>25 differently. I'm talking about where -- I'm</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

Page 78	Page 79
<p>1 ROSEN</p> <p>2 asking you to focus on the distinction between</p> <p>3 the accounts that Barclays was assuming and</p> <p>4 becoming responsible for and the accounts that</p> <p>5 Barclays was not assuming and not becoming</p> <p>6 responsible for. And you told me about the</p> <p>7 first. Now I want to ask you about the second.</p> <p>8 With respect to those accounts, and</p> <p>9 the example I will give you is the foreign</p> <p>10 accounts, when Barclays was acquiring</p> <p>11 exchange-traded derivatives in foreign</p> <p>12 organizations around the world and was not</p> <p>13 stepping into the shoes of the foreign -- of</p> <p>14 Lehman in those foreign clearing organizations,</p> <p>15 what was your understanding as to how margin</p> <p>16 clearing fund deposit was being treated under</p> <p>17 the business deal?</p> <p>18 MR. HUME: I object to the question as</p> <p>19 lacking foundation, particularly in light of</p> <p>20 the witness' testimony that he is not aware</p> <p>21 of any such accounts. Therefore, I object</p> <p>22 that it calls for speculation and a</p> <p>23 hypothetical, and he is not here as an</p> <p>24 expert.</p> <p>25 A. Well, if there was a guarantee fund</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 deposit, and it was a Lehman guarantee fund</p> <p>3 deposit, you would have to parse that under the</p> <p>4 agreement. But there are -- the fact that</p> <p>5 Lehman may not have been a clearing member of</p> <p>6 the foreign clearinghouse directly and had</p> <p>7 contributed to the guarantee fund deposit does</p> <p>8 not mean that was not an account for which</p> <p>9 Barclays would have become responsible, as I</p> <p>10 said, if Barclays was in any part of the chain</p> <p>11 between customer and the clearinghouse.</p> <p>12 So, it may not have been Barclays -- a</p> <p>13 transfer of an account, but if Lehman maintained</p> <p>14 the account and carried the account with</p> <p>15 Barclays who carried it with somebody else, that</p> <p>16 would have been a different matter. And if it</p> <p>17 was part of the assets that were purchased, if</p> <p>18 it were part of the assets that were purchased,</p> <p>19 then whether or not the account was transferred</p> <p>20 or whether or not it was an account for which</p> <p>21 Barclays became responsible, if it was something</p> <p>22 that they acquired as part of Lehman's business,</p> <p>23 exchange listed derivatives business, then it</p> <p>24 would be included.</p> <p>25 I guess I am not here to advise you as</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 80	Page 81
<p>1 ROSEN</p> <p>2 to whether the language provided for that or</p> <p>3 not.</p> <p>4 Q. I don't want any advice, sir. What I</p> <p>5 am looking for is to follow up on your earlier</p> <p>6 testimony where you said you needed to see the</p> <p>7 draft, and specifically what I had asked you was</p> <p>8 to see where Barclays was not taking the</p> <p>9 account, Barclays did not take the account at a</p> <p>10 foreign exchange. And I believe you answered</p> <p>11 that that language is dealt with elsewhere and</p> <p>12 you needed the clarification letter to point</p> <p>13 that out.</p> <p>14 Can you point out in this draft of the</p> <p>15 clarification letter anything that you</p> <p>16 understood at the time covered the situation</p> <p>17 where Barclays was not acquiring the account?</p> <p>18 MR. HUME: Objection, lacks</p> <p>19 foundation. I don't think you have</p> <p>20 established when Barclays didn't acquire the</p> <p>21 account or what that means.</p> <p>22 MR. MAGUIRE: I'm just asking the</p> <p>23 witness to identify what he was referring to</p> <p>24 in his prior testimony.</p> <p>25 A. You are asking -- I am sorry, can you</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 ask specifically the question --</p> <p>3 Q. Sure.</p> <p>4 A. -- that you are asking me to respond</p> <p>5 to.</p> <p>6 Q. What I am focusing on is the limiting</p> <p>7 words -- I won't give it a characterization,</p> <p>8 I'll say the words, that are in the language</p> <p>9 drafted here by you and your Cleary colleagues,</p> <p>10 where you -- where the language we have been</p> <p>11 discussing is specific to accounts for which</p> <p>12 purchaser shall become responsible as of the</p> <p>13 closing.</p> <p>14 I'm asking you what -- where in this</p> <p>15 document did it deal with those accounts for</p> <p>16 which Barclays did not become responsible at the</p> <p>17 closing?</p> <p>18 MR. MORAG: Object to the form, and I</p> <p>19 think you have mischaracterized his</p> <p>20 testimony. I'm not sure he said it was</p> <p>21 reflected in this draft.</p> <p>22 A. Well, as I said, this exception is</p> <p>23 itself limited to the extent that it was a</p> <p>24 purchased asset of a business. This language</p> <p>25 does not call out and specifically address --</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

Page 82	Page 83
<p>1 ROSEN</p> <p>2 this particular provision doesn't specifically</p> <p>3 address it, and how it would be treated would be</p> <p>4 a function of how you evaluate the scope of the</p> <p>5 purchased assets which were all the assets</p> <p>6 associated with the business.</p> <p>7 So you would still have to evaluate</p> <p>8 it, not under this language but under the</p> <p>9 purchased asset provisions. Obviously I can't</p> <p>10 go further into how you would evaluate those</p> <p>11 provisions.</p> <p>12 Q. I'm not asking you to form an opinion</p> <p>13 here, just so we are clear. I am only asking</p> <p>14 you for your understanding at the time. And --</p> <p>15 A. As I said, I'm not -- there seems to</p> <p>16 be a clause B that's not here, and so I'm not</p> <p>17 entirely comfortable sitting here reflecting on</p> <p>18 all of the things that I was thinking about at</p> <p>19 the time that I drafted.</p> <p>20 But I will -- but I agree that the</p> <p>21 language here as it relates to customer</p> <p>22 accounts, are accounts that are transferred or</p> <p>23 accounts for which BCI is becoming responsible</p> <p>24 in some way.</p> <p>25 Q. And you had referred earlier in your</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 testimony to where that situation was covered by</p> <p>3 language elsewhere. Was there some other</p> <p>4 language --</p> <p>5 A. I am sorry, I am sorry. Or if it was</p> <p>6 a cash item maintained by LBI pursuant to</p> <p>7 15c3-3.</p> <p>8 So if there was -- so it wouldn't have</p> <p>9 been customer property, it would have been</p> <p>10 property, technically property of Lehman</p> <p>11 Brothers, Inc. But to the extent that it</p> <p>12 relates, the reserve relates to a customer</p> <p>13 account, that does not seem to be so limited</p> <p>14 here.</p> <p>15 But I don't think you need me to parse</p> <p>16 the language in this provision.</p> <p>17 Q. No. What I am looking for, sir, is,</p> <p>18 when you referred to language elsewhere covering</p> <p>19 this specific point where Barclays was not</p> <p>20 acquiring the accounts, what language did you</p> <p>21 have in mind?</p> <p>22 A. Purchased assets.</p> <p>23 Q. Section 1 --</p> <p>24 A. Purchased assets provisions.</p> <p>25 Q. Section 1 of the clarification letter?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 84	Page 85
<p>1 ROSEN</p> <p>2 A. The answer to your question is, all of</p> <p>3 the other provisions of the documentation that</p> <p>4 establish the rights and obligations of the</p> <p>5 parties.</p> <p>6 Q. Is there anything specific you can</p> <p>7 point me to?</p> <p>8 A. The provisions that relate to</p> <p>9 purchased assets.</p> <p>10 Q. Is that generally section 1 of the</p> <p>11 clarification letter, or is there anything --</p> <p>12 A. It is in the APA, and it's in the</p> <p>13 clarification letter.</p> <p>14 Q. Is there any more specificity you can</p> <p>15 provide me?</p> <p>16 A. I think I am going to leave that</p> <p>17 parsing to you.</p> <p>18 Q. If you turn to page 4, section 8, the</p> <p>19 new section 8 that starts with DTC arrangements</p> <p>20 and some language, that language and other</p> <p>21 language removed. Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Can you tell me what prompted the</p> <p>24 removal of the language concerning the DTC</p> <p>25 arrangements?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 A. I don't think it was removal of that</p> <p>3 language so much as a belief by the drafters</p> <p>4 that these provisions needed to cover a broader</p> <p>5 set of -- category of arrangements than just</p> <p>6 DTCC. Because, for example, there was the OCC</p> <p>7 arrangement and possibly other clearinghouses of</p> <p>8 which Lehman might have been a member that might</p> <p>9 have been coming over.</p> <p>10 Q. This section continues in the next</p> <p>11 sentence, "Assumption of accounts: Purchaser</p> <p>12 shall assume all customer accounts of the</p> <p>13 business." Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. And do you understand that the text</p> <p>16 that follows all describes transfers of property</p> <p>17 to Barclays in connection with the transfer of</p> <p>18 customer accounts?</p> <p>19 MR. HUME: Objection to the form.</p> <p>20 A. First let me just clarify that it says</p> <p>21 all accounts of the business, not necessarily</p> <p>22 all accounts.</p> <p>23 MR. MORAG: I am going to object --</p> <p>24 A. I think to answer your question, I am</p> <p>25 going to have to evaluate how you interpret the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

ROSEN

interplay of various provisions here. I'm not sure I can answer that without effectively analyzing the contract and interpreting it.

Q. Did you understand that Barclays was assuming all of the customer accounts of the business?

MR. HUME: Objection to the form.

MR. MORAG: Again, the time frame?

Q. At the time of this draft.

A. I -- it was very fluid. I can't recall when I understood what precisely was in and what was out. I knew that there were some things that were in and some things that were out, but I'm not sure at this time what my state of knowledge was.

I was also not the draftsman of this or the draftsman to use language that was common to the provision.

Q. Did you come to understand at some point that certain of the customer accounts of the business were not being assumed by Barclays?

A. Yes. Yes, I understood that there was the sale of something called PAM that was being sold to Neuberger Berman. I can't remember when
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ROSEN

I became aware of that.

And I believe that there was -- there were certain exceptions to the PIM accounts, or maybe it was some other business, but I didn't -- as I say, I am not -- I was not and am not familiar with how the business was organized, but there were some that were in and there were some that were not.

Q. I will show you a document previously marked as Exhibit 616A. Obviously I'm not going to ask you about the first page, which is an e-mail that you weren't copied on, but I will ask you, sir, if the rest of the document is a draft that you were aware of at the time.

A. I'm not sure that I can -- I can't read this. I can't read out the provisions, and I don't know what time this document was generated or when it was shared with anyone on our side sitting here. I don't know. This may have been an internal draft. I'm not sure I recall seeing it contemporaneously.

Q. The only reason I wanted to show it to you is really on page 2 at the bottom, if you can make out through the highlighting, you will
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ROSEN

see language concerning margin and guarantee funds deposit, the language that you address in your declaration.

A. I cannot actually see it on this copy unfortunately.

Q. OK. I'll represent to you that this draft removes that language. I think in your declaration, you refer to a draft --

MR. HUME: Are you representing it is removed or removed and replaced with something else?

MR. MAGUIRE: I can read it on my copy.

MR. HUME: I understand. But you are representing that it is removed. Are you representing that anything was added?

MR. MAGUIRE: I am certainly not representing that.

MR. HUME: There is language added right after the removal.

MR. MORAG: If I may state for the record, in terms of the declaration, the fact of the non-inclusion of the language of paragraph 5 was established by a draft, a
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ROSEN

subsequent draft, but not necessarily this one.

MR. MAGUIRE: You're right, actually, and we will show that to the witness next. It is Exhibit 50.

Q. In broad terms, you were aware that the language we have been discussing from your -- that you quote in your declaration was removed, but do you have a recollection of actually seeing the draft that had that removal in it, that showed the actual deletion of that language?

A. I would have seen a draft which modified the language that we had included, as I described earlier. Whether I saw it in a blackline or a clean copy, I can't remember.

Q. Did you ask any of your partners about that question, whether they saw it with the language actually deleted --

A. I didn't ask my partners or I don't recall asking my partners that question.

Q. Let me show you a document previously marked as Exhibit 50. Take whatever time you need to review the draft, sir, and just let me
TSG Reporting - Worldwide 877-702-9580

<p style="text-align: right;">Page 90</p> <p>1 ROSEN</p> <p>2 know when you're ready.</p> <p>3 And my first question is going to be,</p> <p>4 have you seen this draft before?</p> <p>5 A. I've seen before an e-mail transmittal</p> <p>6 from Michael Mazzuchi passing on a draft of the</p> <p>7 clarification letter to DTCC and its counsel at</p> <p>8 their request, and there being a draft of the</p> <p>9 clarification letter attached to it that was</p> <p>10 provided to us by Weil.</p> <p>11 But as to whether this is exactly the</p> <p>12 same draft, I can't say. I would have to</p> <p>13 verify.</p> <p>14 Q. You will see at the bottom of page 1</p> <p>15 of the draft is a reference to LBI's clearance</p> <p>16 boxes.</p> <p>17 A. I see that.</p> <p>18 Q. Do you know why the word DTC was not</p> <p>19 included there?</p> <p>20 A. My understanding is that it was not</p> <p>21 included because there were clearance box assets</p> <p>22 held at locations other than DTCC. So DTCC was</p> <p>23 not the exclusive depository of clearance boxes,</p> <p>24 is my recollection.</p> <p>25 Q. And what were the other depositories?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 91</p> <p>1 ROSEN</p> <p>2 A. I don't remember knowing the details.</p> <p>3 Q. Did anyone consider saying DTC and</p> <p>4 other clearance boxes?</p> <p>5 MR. MORAG: Object to the form.</p> <p>6 A. I wouldn't speculate as to whether</p> <p>7 somebody did or didn't. They may have.</p> <p>8 Q. In a prior draft, there had been a</p> <p>9 reference to the box 074, which I understand was</p> <p>10 the DTC box. Do you have any knowledge as to</p> <p>11 why that reference was dropped?</p> <p>12 A. I am not certain, but I have a</p> <p>13 recollection that it was because 074 may not</p> <p>14 have included all of the clearance box assets,</p> <p>15 that they may not have been confined to the</p> <p>16 account 074. But I'm not 100 percent certain.</p> <p>17 I have a recollection of something along those</p> <p>18 lines.</p> <p>19 Q. If you look at the bottom of page 1,</p> <p>20 you will see there is a parenthetical that says,</p> <p>21 "provided, however, that purchaser in its</p> <p>22 discretion may elect within 60 days after the</p> <p>23 closing to return any such securities to LBI."</p> <p>24 Do you see that?</p> <p>25 A. Yeah.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
<p style="text-align: right;">Page 92</p> <p>1 ROSEN</p> <p>2 Q. And can you tell me what was the</p> <p>3 purpose of that?</p> <p>4 A. I'm not sure that we were the source</p> <p>5 of that language. I think that on its face, it</p> <p>6 seemed to have contemplated that there may be</p> <p>7 things that, in the clearance box, that Barclays</p> <p>8 might not have wanted.</p> <p>9 Q. And do you have any understanding as</p> <p>10 to what kinds of assets Barclays would not want</p> <p>11 from the clearance box?</p> <p>12 MR. HUME: Objection, calls for</p> <p>13 speculation.</p> <p>14 A. As I say, I'm not sure that this was</p> <p>15 motivated by Barclays, and I'm not sure that</p> <p>16 this wasn't an option that was being provided to</p> <p>17 Barclays that Barclays didn't see any reason to</p> <p>18 negotiate, since it gave them the ability to do</p> <p>19 something but not an obligation to do it.</p> <p>20 Q. But you don't have knowledge as to</p> <p>21 what prompted this?</p> <p>22 A. No, I don't. Or I should say I don't</p> <p>23 recall.</p> <p>24 Q. If you turn to page 4, and see the</p> <p>25 paragraph 8, transfer of customer accounts. And</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 93</p> <p>1 ROSEN</p> <p>2 towards the end of that, you will see a</p> <p>3 reference to 15c3.</p> <p>4 A. Yes.</p> <p>5 Q. And at the end of that sentence, it</p> <p>6 refers to the phrase, "or securities of</p> <p>7 substantially the same nature and value."</p> <p>8 A. Yes.</p> <p>9 Q. Can you tell me how did those words</p> <p>10 get to be inserted in the clarification letter?</p> <p>11 MR. MORAG: Which words? All of them?</p> <p>12 Q. The words "or securities of</p> <p>13 substantially the same nature and value."</p> <p>14 A. My recollection of the events for</p> <p>15 that, following on the discussion which led to</p> <p>16 the limiting of this provision to 769 million of</p> <p>17 securities, that Harvey Miller raised the</p> <p>18 question whether or not it was clear that we</p> <p>19 could agree to this.</p> <p>20 And I told him that I was not aware of</p> <p>21 a limitation, particularly to the extent as had</p> <p>22 been represented, that the 769 million dollars</p> <p>23 was excess to the level that Lehman was required</p> <p>24 to reserve under 3-3 as of that date, and in</p> <p>25 response to the question can we do it, I</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

<p style="text-align: right;">Page 94</p> <p>1 ROSEN</p> <p>2 suggested that if there was a concern along</p> <p>3 those lines, which we didn't share -- and I'll</p> <p>4 say only, my recollection is there was a</p> <p>5 question raised about it -- that we say to the</p> <p>6 extent permitted by applicable law and as soon</p> <p>7 as practicable after the closing.</p> <p>8 And because the provision by its terms</p> <p>9 then raised a question about whether or not this</p> <p>10 value was going to be conveyed, because the</p> <p>11 reason this was in here and was the subject of</p> <p>12 discussion was that there was a significant</p> <p>13 erosion or concern about the erosion of value</p> <p>14 and assets that were contemplated to be</p> <p>15 delivered initially but were not available to be</p> <p>16 delivered, and that Lehman identified this as a</p> <p>17 source of value, and so we wanted to make sure</p> <p>18 that that value was conveyed.</p> <p>19 And so as a result of this language,</p> <p>20 it made us think, well, fine, if you can't give</p> <p>21 us these 769 million of securities, give us</p> <p>22 those other securities of a similar nature and</p> <p>23 value.</p> <p>24 That's my recollection of the origins</p> <p>25 of this provision.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 95</p> <p>1 ROSEN</p> <p>2 Q. I'll show you a document we have</p> <p>3 previously marked as Exhibit 451. Have you seen</p> <p>4 that before, sir?</p> <p>5 A. I don't recall that I necessarily saw</p> <p>6 precisely this. I do recall that there was a</p> <p>7 representation made that the SEC had approved as</p> <p>8 excess a certain level of value and that there</p> <p>9 was an e-mail. We thought that we were going to</p> <p>10 see an e-mail saying that. Instead, there was</p> <p>11 an e-mail, I recall, but which didn't involve --</p> <p>12 didn't come from the SEC, but reported that it</p> <p>13 was approved.</p> <p>14 I don't think I have seen this</p> <p>15 particular document, and I can't say that I</p> <p>16 recall with precision the numbers for the</p> <p>17 allocations between cash and securities.</p> <p>18 Q. Did you ever discuss Lehman's 15c3</p> <p>19 account with Mike Macchiaroli?</p> <p>20 A. I don't recall being able -- at the</p> <p>21 time that I sort of first saw this, which I</p> <p>22 believe was on a -- or not this -- I was made</p> <p>23 aware of the e-mail and shown something, I do</p> <p>24 not believe that I spoke to Mike Macchiaroli,</p> <p>25 but as I mentioned at the outset of this, I had</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
<p style="text-align: right;">Page 96</p> <p>1 ROSEN</p> <p>2 earlier had a conversations with Mike which,</p> <p>3 while we didn't discuss specifically the 3-3</p> <p>4 reserve account or the amount that was excess, I</p> <p>5 came away with the impression that he was</p> <p>6 optimistic that there was going to be sufficient</p> <p>7 assets.</p> <p>8 So I did not have a -- I did not have</p> <p>9 a -- I did not have a confirmation from him. I</p> <p>10 didn't have a concern that there would be a</p> <p>11 deficiency, but I did not have an opportunity to</p> <p>12 actually go over this with him.</p> <p>13 Q. So in your earlier conversation with</p> <p>14 Mr. Macchiaroli, he was optimistic that there</p> <p>15 would be sufficient assets available to pay all</p> <p>16 customer claims; is that correct?</p> <p>17 A. Yeah. That -- well, I don't think he</p> <p>18 would have -- I don't think he would have -- I</p> <p>19 don't mean to put words in his mouth that he</p> <p>20 would have made a representation to those</p> <p>21 effects, but I came away with an impression that</p> <p>22 he was optimistic that there wouldn't be a</p> <p>23 shortfall.</p> <p>24 Q. And you took from that conversation</p> <p>25 that there wouldn't be a shortfall in customer</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 97</p> <p>1 ROSEN</p> <p>2 property?</p> <p>3 A. Yes.</p> <p>4 Q. And you, therefore, expected --</p> <p>5 A. Well, I took away that at that point,</p> <p>6 knowing what he knew, that it looked as though</p> <p>7 there wouldn't be. I wouldn't say -- I wouldn't</p> <p>8 characterize it beyond that.</p> <p>9 Q. And he didn't tell you to what extent</p> <p>10 there would be any excess?</p> <p>11 A. We didn't discuss any quantification.</p> <p>12 Q. Did you have any discussions with</p> <p>13 anyone at the SEC concerning the reserve account</p> <p>14 or any excess in the reserve account?</p> <p>15 MR. MORAG: Objection, asked and</p> <p>16 answered.</p> <p>17 A. I don't recall.</p> <p>18 Q. Now, you were responding to a Weil</p> <p>19 question. Was it Harvey Miller who said can we</p> <p>20 do it?</p> <p>21 A. I believe it was Harvey Miller, yes.</p> <p>22 Q. What he was referring to is the</p> <p>23 transfer from the 3-3 account?</p> <p>24 A. Yes. He was, he was raising the</p> <p>25 question as to whether there might be a</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

ROSEN

limitation on this transfer.

Q. And did you understand that there was 1.7 billion in the reserve account?

A. I don't think I recall at that time specifically what the number was. I knew that there was a reserve account, and I knew it was funded. I can't recall at what level it was funded.

Q. And there was -- one issue was this cash issue that you testified about earlier, right? And that was resolved by people avoiding the issue and simply not transferring the cash to Barclays, correct?

A. Correct.

Q. And that left the 700 or 769 million which was government securities?

A. They were securities, yes.

Q. And with respect to that, Mr. Miller raised the question can we do it, meaning can we transfer this 769 million from the reserve account to Barclays?

A. Correct.

Q. And you said that there was no limit to the extent to which that could be transferred

TSG Reporting - Worldwide 877-702-9580

ROSEN

where there was an excess in the account?

MR. MORAG: Objection to mischaracterizing. I think he said limitation.

A. What I said was I wasn't aware of a limitation that would prevent them as part of this transaction from effecting that transfer, and I said particularly if it is an excess. I didn't limit it to it being an excess.

Q. Where there was no excess, where there was in fact a deficiency or shortfall in customer property, were you aware of any limitation on the ability of Lehman to transfer from the reserve account to Barclays?

A. There is not a limitation identified to me that couldn't necessarily be addressed as part of the transaction. They could -- there is no -- the sale of a business where the customer accounts or some portion of them are going over, I'm not aware of a reason why the SEC and the court couldn't assent to the transfer of those assets if it wanted to.

And one would have inferred from the documents that as part of the assets of the
TSG Reporting - Worldwide 877-702-9580

ROSEN

business that was being sold, that that had in fact been approved in a transaction approved by the court and to which the SEC gave no objection.

Q. And that would have involved then transferring -- where there was a shortfall or deficiency, the transfer of 769 million would have to come from customer property; isn't that correct?

MR. MORAG: Object to the form.

A. Not necessarily.

Q. Well, the transfer of that amount to Barclays would mean that 769 million would not be available to satisfy customer claims?

A. That's not -- whether or not Lehman would have been under-reserved going forward, when it was in liquidation mode, is an entirely different question that would not necessarily -- if these assets were in the account but this account was required to have more, those assets would still be assets of Lehman, that as part of this transaction could have been approved to be transferred to Barclays as part of the business that it was acquiring.

TSG Reporting - Worldwide 877-702-9580

ROSEN

Q. And it was your view that could have been done regardless of whether that left customers, remaining customers short by the amount of 769 million?

A. That's not what I said. I said that could be done even if as a result Lehman had a deficit in its reserve account.

Q. I know that's what you said. But my question is, where there is such a deficit and the transfer of these assets means that the customers do not have access to that 769 million, and that means that --

A. You know, those assets may have had -- as the deal was approved, it was represented that there were other assets that Lehman had. The assets that can be made -- as I'm sure you are aware, the assets that can be made available to customers in satisfaction of their claims are not limited to what is in the 15c3-3 account. That is a regulatory construct that does not limit the recourse of customers.

So I reject the premise that the transfer of that would necessarily have resulted in a shortfall.

TSG Reporting - Worldwide 877-702-9580

Page 102	Page 103
<p>1 ROSEN</p> <p>2 Q. And leaving aside the whole construct</p> <p>3 and whole premise, my only question is, you were</p> <p>4 not aware of any limitation, even in the</p> <p>5 event --</p> <p>6 A. I wasn't, I wasn't thinking about all</p> <p>7 of the -- parsing all of the scenarios. There</p> <p>8 was nothing on the face of this agreement that</p> <p>9 to my mind couldn't be accomplished, and from my</p> <p>10 perspective, caveating it with the language "the</p> <p>11 extent permitted by applicable law," even though</p> <p>12 you could argue that that's implicit, was a</p> <p>13 concession that we could readily make in order</p> <p>14 to complete the deal.</p> <p>15 Q. So given that concession, you didn't</p> <p>16 think through what would happen if the transfer</p> <p>17 left unavailable property for customers?</p> <p>18 MR. MORAG: Object to the form.</p> <p>19 A. No, I reject that characterization.</p> <p>20 It was not necessarily the case that there would</p> <p>21 have been any deficit for customers as a result.</p> <p>22 And as a result, because I didn't have the</p> <p>23 information available to evaluate it, I did not</p> <p>24 engage in a hypothetical conjecture as to</p> <p>25 whether -- under what circumstances or set of</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 facts there would be a problem.</p> <p>3 But from my perspective, but for the</p> <p>4 concern, which was really a procedural concern</p> <p>5 as a matter of caution, as I understood it from</p> <p>6 Harvey Miller, I believed that these assets</p> <p>7 arguably were intended to be transferred, were</p> <p>8 intended to be transferred as part of the assets</p> <p>9 of the business.</p> <p>10 Q. In any event, you and the Barclays</p> <p>11 side of the house agreed to set aside the cash</p> <p>12 issue by taking the billion dollars in cash out</p> <p>13 of the deal, correct?</p> <p>14 A. By taking the billion dollars out of</p> <p>15 the deal?</p> <p>16 Q. Yeah. The 1 billion dollars in the</p> <p>17 bank account was not being transferred as part</p> <p>18 of the reserve account?</p> <p>19 A. Let me say this. This provision, this</p> <p>20 provision doesn't call for the transfer of that.</p> <p>21 I will leave it to the lawyers to argue what the</p> <p>22 implications of that might be.</p> <p>23 Q. And as to the remaining issue as</p> <p>24 raised by Mr. Miller about can we do it with</p> <p>25 respect to the government securities, somebody</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 104	Page 105
<p>1 ROSEN</p> <p>2 proposed that that issue would be resolved by</p> <p>3 inserting the words "to the extent permissible</p> <p>4 by law"?</p> <p>5 A. My recollection is that that was me.</p> <p>6 Q. Now, did all this happen in a hallway</p> <p>7 conversation?</p> <p>8 A. Yes.</p> <p>9 Q. Who was present?</p> <p>10 A. I don't have a clear recollection</p> <p>11 other than Harvey Miller was there, Vic Lewkow</p> <p>12 was there. I think Dana Fleischman may have</p> <p>13 been there at least for some portion of it. And</p> <p>14 there were others huddling around, but I don't</p> <p>15 have a clear recollection, and to be perfectly</p> <p>16 candid, because I wasn't involved in the</p> <p>17 negotiation of this transaction from the very</p> <p>18 beginning, I was not as -- and I was mostly</p> <p>19 troubleshooting specific issues, particularly</p> <p>20 those relating to the clearing arrangements, I</p> <p>21 was not as familiar with the lawyers from the</p> <p>22 other side, so I could not have readily, as</p> <p>23 readily identified them.</p> <p>24 Q. How long did the, did this hallway</p> <p>25 huddling session last?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 A. I honestly don't know. More than a</p> <p>3 couple of minutes, less than a couple of hours.</p> <p>4 Q. And can you tell me what you recall</p> <p>5 being said in the course of this hallway</p> <p>6 conversation?</p> <p>7 A. Pretty much what I have just described</p> <p>8 to you, that there was a group already there</p> <p>9 when I arrived. I guess some predecessor</p> <p>10 language to this was being reviewed, and Harvey</p> <p>11 Miller, as I said, raised the question whether</p> <p>12 there might be limits under applicable law, and</p> <p>13 I said that I wasn't aware of any, but to the</p> <p>14 extent that they exist, and it would address</p> <p>15 your concern, we can provide that the transfer</p> <p>16 be to the extent permitted by applicable law.</p> <p>17 But if there was such a constraint, that that</p> <p>18 basically 769 million dollars in securities</p> <p>19 would come from somewhere else.</p> <p>20 And can I remember exactly what was</p> <p>21 said, whether it was a grunt or a nod or a</p> <p>22 smile, I don't remember, but I remember coming</p> <p>23 away from the conversation feeling that we had</p> <p>24 sort of resolved the point.</p> <p>25 Q. Who was the person who gave the --</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

ROSEN

manifested assent with the grunt or nod or smile?

A. I could be wrong, my recollection was that it was Harvey Miller, but I could be wrong.

Q. Did Mr. Miller agree to your proposal that "to the extent permitted by applicable law" would be inserted into the --

A. That was my understanding, yes.

Q. Did he also agree to avoid the cash issue by having this provision not call for the transfer of a billion dollars in cash?

A. I believe he did.

Q. And did that also happen in this hallway conversation?

A. It may have been two different conversations or it may have been a continuing conversation. Again, I was called out to deal with other issues constantly, issues that were being dealt with in different rooms and on different floors, so I don't have a clear recollection of precisely what the progress, the progression of discussions were.

The cash conversation clearly preceded this. And there may have been a break before
TSG Reporting - Worldwide 877-702-9580

ROSEN

this issue, it may have been that drafts were prepared and exchanged to reflect the first issue, and then the second issue was raised. I just don't have a clear recollection of it.

Q. We seem to have the cash issue, you say maybe came up first, and then we have a second issue is, can we do it, as in transferring the 769, and that gets resolved with your proposed language "to the extent permissible by applicable law," right?

MR. HUME: Objection, mischaracterizes his testimony.

A. Do you want to repeat the question?

Q. If the first issue is the cash issue, the second issue is the can we do it question that Mr. Miller raised?

A. Transfer, there was a discussion about the transfer of securities.

Q. Which gets resolved with your proposed language?

A. Yes. And the documentation of it gets resolved.

Q. Do I understand you to be saying there was also a third issue in that somebody said if
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ROSEN

for any reason it is not permissible to transfer the government securities from the reserve account, Lehman has to make that up to Barclays with securities of some other value?

A. I'm not sure I would describe it as a third issue, but as an adjunct to the second issue, that if the securities, these 769 million were not available, some other 769 million dollars of securities would be made available.

Q. How did that, whatever you want to call it, an adjunct to the second issue or a third issue, how did that issue get raised?

A. How did it get raised?

MR. HUME: Objection, asked and answered.

A. Someone on our side, maybe me, maybe somebody else who was there, I don't have a clear recollection on the second point, but said, well, if there is any contingency to the 769 from the 3-3, we get them from somewhere.

The whole purpose of this, again, was to say -- we were identifying a source of value that was in the deal in the light of other evaporating value, and so it was important to
TSG Reporting - Worldwide 877-702-9580

ROSEN

the Lehman side -- I am sorry, it was important to the Barclays side that if this wasn't available, some other asset would be available.

Q. Was there any discussion about the implications for customer property claims --

A. No, there was no discussion about customer property claims.

Q. And there was no discussion of the implications on customers of transferring 769 million --

A. None of us, none of us on the Barclays side had anything like the information that would have been necessary to evaluate that, to even raise questions about it. That information was not available, and there was no way for it to become available and to be discussed and analyzed in a time frame that would have enabled the deal to close.

MR. MORAG: Let him finish the questions.

Q. Can you tell me -- you came away from this meeting with an understanding that Harvey Miller or someone on the Weil side had manifested assent to the proposition that if the
TSG Reporting - Worldwide 877-702-9580

Page 110	Page 111
<p>1 ROSEN</p> <p>2 government securities in the reserve account</p> <p>3 weren't available, some alternative similar</p> <p>4 securities would be provided.</p> <p>5 Can you tell me, how are you -- how do</p> <p>6 you know that Mr. Miller or his colleague was</p> <p>7 agreeing to that unconditional transfer as</p> <p>8 opposed to his nod, his grunt, his smile,</p> <p>9 whatever you recall, meaning nothing more than</p> <p>10 this conversation is at an end or that we agree</p> <p>11 to your proposed language "to the extent</p> <p>12 permitted by applicable law"?</p> <p>13 MR. MORAG: Object to the form.</p> <p>14 A. I don't think I have more to add, more</p> <p>15 than what I have already said, except to say</p> <p>16 that a draft was provided to us by Weil that</p> <p>17 reflected that agreement.</p> <p>18 Q. You got a draft from Weil which</p> <p>19 provided that Barclays -- that Lehman would</p> <p>20 transfer to Barclays 769 million from the</p> <p>21 reserve account or securities of a substantially</p> <p>22 similar nature. Are you aware of that?</p> <p>23 A. I recall that.</p> <p>24 Q. What was the reaction on the Barclays'</p> <p>25 side when you got that draft?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 A. We didn't know what "or nature" meant</p> <p>3 and whether it was clear that it meant that they</p> <p>4 would be of equivalent value. So we added the</p> <p>5 words "or value." I believe I may have made</p> <p>6 that change.</p> <p>7 Q. Did you have any discussion with</p> <p>8 anyone at Weil to find out what they meant by</p> <p>9 adding the words "substantially similar,"</p> <p>10 without the words "in value"?</p> <p>11 MR. MORAG: Objection, foundation.</p> <p>12 You have not established that Weil added</p> <p>13 these words as opposed to mistyped or didn't</p> <p>14 type the Cleary proposal.</p> <p>15 Q. Well, let me back up. I thought you</p> <p>16 said you were provided with a draft from Weil</p> <p>17 that included the words "substantially similar</p> <p>18 nature"?</p> <p>19 A. I believe I was shown a draft that</p> <p>20 included that language, an interim draft that</p> <p>21 included that language.</p> <p>22 Q. Do you know who provided you that</p> <p>23 draft?</p> <p>24 A. I don't have a clear recollection, but</p> <p>25 my assumption is it was Weil. That's my</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 112	Page 113
<p>1 ROSEN</p> <p>2 assumption.</p> <p>3 Q. Did you have any discussion with Weil</p> <p>4 about that draft and specifically about those</p> <p>5 words in that draft?</p> <p>6 A. Yes, in the sense that we provided a</p> <p>7 markup of it with the words "or value," and that</p> <p>8 seems to have been accepted as an appropriate</p> <p>9 clarification of the agreement that we had</p> <p>10 reached earlier and reflected in the next</p> <p>11 turnover of documents.</p> <p>12 Q. Any communication between the Cleary</p> <p>13 and the Weil folk, other than --</p> <p>14 A. Yes. The language "or value," which I</p> <p>15 think speaks for itself.</p> <p>16 Q. I'm just saying, anything beyond that?</p> <p>17 A. I don't think there needed to be</p> <p>18 anything beyond that.</p> <p>19 Q. And have you heard from your partners</p> <p>20 whether they are aware of anything beyond that?</p> <p>21 A. I don't have a recollection of</p> <p>22 discussing it.</p> <p>23 MR. HUME: Are you going to finish</p> <p>24 before lunch or should we take a break for</p> <p>25 lunch or take another break? Either way I</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 think we can use another break. We have</p> <p>3 been going for an hour and a half.</p> <p>4 MR. MAGUIRE: Why don't we take a</p> <p>5 break, and if lunch is ready, this is a fine</p> <p>6 time for lunch. I certainly will continue</p> <p>7 after lunch.</p> <p>8 MR. HUME: You will.</p> <p>9 MR. MAGUIRE: Yes. I still have quite</p> <p>10 a bit to go.</p> <p>11 (Recess)</p> <p>12 BY MR. MAGUIRE:</p> <p>13 Q. Sir, before the break, you were</p> <p>14 describing the hallway conversation at Weil</p> <p>15 Gotshal's offices concerning the 3-3 account,</p> <p>16 and I note that is a subject of paragraph 7 of</p> <p>17 your declaration; is that correct?</p> <p>18 A. Yes.</p> <p>19 Q. In paragraph 7, and you don't refer to</p> <p>20 the contingency that you described in your</p> <p>21 testimony earlier today concerning what would</p> <p>22 happen if Barclays did not get or Lehman could</p> <p>23 not transfer government securities from the 3-3</p> <p>24 account. Do you see that?</p> <p>25 A. Um-hm.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

ROSEN

Q. Can you tell me why you did not refer to that contingency in your declaration?

A. No.

Q. Earlier in your declaration, in paragraph 5, you refer both to the removed language that we have discussed earlier, the language that starts, "any and all property" -- you remember that? -- and also to the parenthetical that ultimately ends up being inserted in the clarification letter, that's a parenthetical that reads, "and any property that may be held to secure obligations under such derivatives."

A. Correct.

Q. Can you tell me why when you posed the parenthetical, you didn't simply put the earlier language in the parenthetical?

A. The only reason is that it was -- the original language had been obviously subject to modification, and I didn't want to get embroiled -- we didn't have time to get embroiled in sending back language and having extensive negotiations.

So the purpose of doing it this way

TSG Reporting - Worldwide 877-702-9580

ROSEN

was to do it as simply and clearly as possible and not resurrect language that might have been -- for other reasons raised issues in people's minds for reasons unrelated to the point that was intended to be conveyed here, clarified here.

Q. By inserting the parenthetical, did you mean anything different from what you say in your declaration, paragraph 5 was documenting the business deal?

MR. MORAG: Object to the form.

Q. In other words, did you mean anything different in the language in the parenthetical from the earlier language that had been removed?

MR. HUME: Objection, I think you are really calling for him to interpret the contract now.

MR. MAGUIRE: No, no, I am asking what he meant at the time.

A. What I will say is that I meant to express the thought reflected in the markup, but I didn't parse, because I didn't have time to parse the differences in the wording. And this was intended to pick up everything in a shorter TSG Reporting - Worldwide 877-702-9580

ROSEN

and more concise formulation.

Q. Do you know how much in value terms this parenthetical picked up?

MR. MORAG: Objection to the form.

Q. In other words, do you know how much property there actually was that was held to secure obligations under such derivatives?

MR. HUME: The question is whether he knows today?

Q. Did you know at the time what the dollar amount of that was?

MR. MORAG: And I object, lack of foundation.

Go ahead.

A. I did not know the precise number, no.

Q. Did you have a general understanding?

A. I would have assumed it was a significant amount of, significant amount of money. Lehman was a very significant, one of the largest investment banks. They had a very significant business, and I would have assumed that with a significant business would come significant customer property to margin the proprietary and customer activities that were

TSG Reporting - Worldwide 877-702-9580

ROSEN

going on.

So the bigger it was, the more concerned I was about it.

Q. Did you understand that the customer margin was in the billions of dollars?

A. I didn't have specific knowledge of it, but it wouldn't surprise me to hear that. I expected it to be a large number.

Q. Did you understand what the proprietary margin was that was in the billions of dollars?

A. I would have expected it to be of that kind of magnitude, but I didn't know exactly what it was.

Q. Do you know whether the folks at Weil had an understanding as to how much property was picked up by the parenthetical?

MR. MORAG: Object to the form and foundation.

A. All I'll say about that is that they had more ready access to that information through their client than we had.

Q. What about the trustee, do you know whether the trustee had any knowledge about the

TSG Reporting - Worldwide 877-702-9580

ROSEN

amount of the property that was the subject of that parenthetical?

A. I can't speak to the state of mind of the trustee, but I assume that as part of this, the trustee was looking at what was there.

Q. Is your answer the same with respect to the creditors committee?

A. I've had no direct interaction with them, the creditors committee, such that I can recall.

MR. MAGUIRE: We will mark as Exhibit 623 a document dated September 19, 2008, Bates stamped GCGSH0002699 through 700.

(Exhibit 623, document Bates stamped CGSH0002699 through 700 marked for identification, as of this date.)

A. Can I back up a second to your previous question? In terms of what the trustee and Weil knew about the amount of the margin, they would have known -- they were copied on e-mails which -- from OCC just in the context of OCC that suggested that just the pays and collects from -- for the Monday would have been TSG Reporting - Worldwide 877-702-9580

ROSEN

on the order of several hundreds of millions of dollars, which would have suggested an extraordinarily large amount of positions and therefore margin associated with them.

So they could have inferred that it would be an extremely significant amount of margin.

Q. When you refer to the pays and collects, what are you referring to?

A. The accounts are marked on a periodic basis by the clearinghouse, and it was sort of what additional flows are coming in or going out between the clearinghouse and the clearing member as a result of the changes in the marks or the exercises of contracts or whatever other activity is being conducted in the account.

Q. And what's a pay?

A. Well, it depends on what your perspective is, but some amounts are paid by the clearinghouse to the clearing member, and there are amounts that are paid, so if you are receiving the funds, you are the collect, and if you are paying the funds, you're the pay.

Q. Do you know whether the trustee or
TSG Reporting - Worldwide 877-702-9580

ROSEN

Weil actually received any information concerning pays or collects at the OCC prior to the closing?

A. I believe they were copied on e-mail correspondence from the OCC, but that may be a misrecollection, but I believe there was a lot of correspondence including another e-mail that referred to a billion dollars and that confirmed that OCC was going to transfer all of that to Barclays, as we would have all expected.

Q. And did you receive any response to Exhibit 623?

A. I don't have a clear recollection of a specific response to this except that the SEC, after this interim exchange of communications regarding DTCC, stepped up to support the transaction, so presumably if they had had a problem, they would have raised it in connection with their support of the transaction.

Q. We will mark as Exhibit 624 a document Bates stamped DTCC 00126 through 00198.

(Exhibit 624, document Bates stamped DTCC 00126 through 00198 marked for identification, as of this date.)

TSG Reporting - Worldwide 877-702-9580

ROSEN

Q. Is this an e-mail you received from DTCC on or about September 20, 2008?

A. Appears so.

Q. It is a lengthy document. I am really going to ask you only about one of the attachments, the contents.

MR. MORAG: Just for the record, there do appear to be other e-mails starting at page 180 that may or may not be part of this. Since they are dated later, I don't know that they could have been part of the original e-mail.

Q. I'm not going to ask you about anything after 178. But if you could take a look at the pages that begin 175.

A. Um-hm.

Q. You will see on page 176, the first paragraph concerns assumption of accounts.

A. Right.

Q. Was there at one point in time a discussion whereby Barclays was assuming the DTC -- the Lehman accounts at DTCC?

MR. MORAG: Object to the form.

MR. HUME: Object to the form.

TSG Reporting - Worldwide 877-702-9580

Page 122	Page 123
<p>1 ROSEN</p> <p>2 A. I am sorry, can you repeat the</p> <p>3 question.</p> <p>4 Q. Yes. With respect to paragraph 1 at</p> <p>5 the top of page 176, you see that's entitled</p> <p>6 "Assumption of Accounts." Do you recall that</p> <p>7 drafts were exchanged which provided that</p> <p>8 Barclays would assume the Lehman accounts at</p> <p>9 DTC?</p> <p>10 A. I believe in this form, I don't</p> <p>11 believe that Barclays had at this point agreed</p> <p>12 to do that. I know I got these documents. I</p> <p>13 know Michael Mazzuchi was looking at them. I</p> <p>14 don't recall focusing on them, because at the</p> <p>15 time that we got these, our client had not</p> <p>16 decided that it was going to assume the</p> <p>17 accounts. I said it was a potential outcome,</p> <p>18 but it was not one that had been agreed.</p> <p>19 Q. You will see paragraph 2 is entitled</p> <p>20 "Excluded Assets and Liabilities." Did you have</p> <p>21 any discussions with DTCC concerning excluding</p> <p>22 certain assets?</p> <p>23 MR. MORAG: Object to the form.</p> <p>24 A. There were discussions with DTCC about</p> <p>25 what was in the accounts. There were</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 discussions about whether or not or the extent</p> <p>3 to which Barclays was going to assume</p> <p>4 responsibilities for liabilities in the</p> <p>5 accounts, and there were discussions about, in</p> <p>6 recognition that there were assets that Barclays</p> <p>7 was getting as part of the transaction and</p> <p>8 assets that Barclays was not getting as part of</p> <p>9 the transaction, and all of those factors played</p> <p>10 into sort of the crucible of considerations as</p> <p>11 to how this would be -- how this situation with</p> <p>12 DTCC was going to be resolved.</p> <p>13 But I think it was not until Sunday</p> <p>14 night that there was a meeting of the minds as</p> <p>15 to how this was going to be handled. There was</p> <p>16 a first amendment which reflected an arrangement</p> <p>17 which ultimately was -- couldn't be performed</p> <p>18 because of the unavailability of certain</p> <p>19 securities to be used as part of the -- what do</p> <p>20 you call it? -- as part of the credit support</p> <p>21 for DTCC.</p> <p>22 Q. You referred to discussions with DTCC</p> <p>23 concerning assets that Barclays was getting and</p> <p>24 assets that Barclays was not taking. Can you</p> <p>25 tell me what you know of those discussions?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 124	Page 125
<p>1 ROSEN</p> <p>2 A. What I said was there were assets that</p> <p>3 Barclays was taking and there were assets --</p> <p>4 there were assets that Barclays was not taking,</p> <p>5 and there were discussions with DTCC about</p> <p>6 should -- what the position at the DTCC</p> <p>7 subsidiary clearing organizations were, but I</p> <p>8 think in the end, they didn't proceed to a point</p> <p>9 where Barclays was comfortable assuming</p> <p>10 greater -- assuming responsibility for the</p> <p>11 financial obligations that were associated with</p> <p>12 the accounts.</p> <p>13 Q. I'm not going to ask you now about the</p> <p>14 assumption of liabilities or anything about</p> <p>15 assuming liabilities. I just want to ask you</p> <p>16 what you recall of your involvement in any</p> <p>17 discussions with DTCC concerning what assets</p> <p>18 Barclays was taking and what assets Barclays was</p> <p>19 not taking from the Lehman accounts at DTCC.</p> <p>20 A. Those discussions were held by an</p> <p>21 operations team, and I don't believe that there</p> <p>22 was a focus with DTCC on that. The focus on</p> <p>23 what assets were being sold and what were not</p> <p>24 and what liabilities was the deal documentation.</p> <p>25 DTCC was not a part of the negotiations about</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 what Barclays was and wasn't taking, but there</p> <p>3 were extensive meetings about what the</p> <p>4 liabilities might be and what kind of recourse</p> <p>5 was going to be -- you know, what additional</p> <p>6 credit support DTCC might look for.</p> <p>7 Q. Were you aware that a Barclays due</p> <p>8 diligence team visited DTCC's offices?</p> <p>9 A. Yes.</p> <p>10 Q. To review the assets that were there?</p> <p>11 MR. MORAG: Object to the form.</p> <p>12 A. I would say that there was a due</p> <p>13 diligence team that was trying to learn as much</p> <p>14 as it could about the accounts. But I'm not</p> <p>15 sure that there weren't potentially multiple</p> <p>16 objectives from their perspective.</p> <p>17 Q. Who, to your knowledge, was part of</p> <p>18 that operations team?</p> <p>19 A. Gerard Larocca is the individual that</p> <p>20 I corresponded with, but I believe he had an</p> <p>21 extensive team.</p> <p>22 Q. Anyone else you can remember?</p> <p>23 A. I don't remember the names in here,</p> <p>24 no. Maybe John Rodefled.</p> <p>25 Q. Did any of the Barclays operations</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

ROSEN

team members report to you?

A. Well, we communicated. I wouldn't have described what they did as reporting to me.

Q. Did any of them fill you in on any of their specific findings from their due diligence?

A. I think they reported to --

MR. MORAG: It is a yes or no question on that. The substance may be privileged, so I think the answer is -- calls for a yes or a no.

A. That team did not report findings to me.

Q. When you say "that team," you're referring to the due diligence team?

A. The team, the operations team that was at DTCC.

Q. Did you hear through any other source the findings of the Barclays due diligence team?

MR. MORAG: Yes or no.

A. No.

Q. Did you participate in any of the phone calls between any Barclays operations people on that due diligence team and

TSG Reporting - Worldwide 877-702-9580

ROSEN

representatives of DTCC on Sunday, the Sunday night?

A. I may have participated in one call or sort of been in and out of the call while dealing with other issues, but I'm -- I don't have a clear recollection.

Q. Do you recall anything of that call?

A. I don't recall the specifics of the call.

Q. Do you recall when it happened?

A. At what time on Sunday, no.

Q. Do you recall who participated?

A. I don't have a specific recollection. I could speculate based on who was involved in the conversations, but I don't have a specific recollection beyond, you know, it would have included Archie Cox and Jonathan Hughes, Gerard Larocca. As to the other participants, I just don't recall.

Q. Do you recall anything that was said in that call?

A. No. I recall the results of the call, but I don't recall the specific discussion.

Q. Do you know who led the call on the
TSG Reporting - Worldwide 877-702-9580

ROSEN

Barclays side?

A. I'm not sure that there was a leader. There was a group convened to share information and reach conclusions.

Q. Do you recall any Barclays persons speaking on that call?

A. Since it was an internal Barclays call, yes, I mean there was an exchange of --

MR. MORAG: Wait.

MR. HUME: This is --

Q. We may have misunderstood each other. I'm not asking about an internal Barclays call. I'm asking about your -- whether you have any knowledge of a call between Barclays operations people and folks at DTCC on the Sunday night.

A. I am sorry, no.

Q. Did you participate in any telephone call with anyone from DTCC on the Sunday?

A. Yes.

Q. How many calls?

A. I honestly don't remember, but there could have been two or three or maybe three or four, or a long call that I walked in and out of. But there were continued discussions until

TSG Reporting - Worldwide 877-702-9580

ROSEN

quite late at night with DTCC.

Q. Can you tell me on the Barclays side, who were the Barclays participants?

A. Archie Cox, Jonathan Hughes, myself, Michael Klein. I -- Gerard Larocca, although I'm not sure that he was on all of the calls or on the calls all of the time.

Q. And taking the wider Barclays group, you would include yourself as participating in those calls?

A. I was in a room for a lot of those calls, not all of them.

Q. Did you say anything on any of those calls?

A. Did I say anything on those calls? I may very well have, but I don't have specific recollection of what I may have said.

Q. Any general recollection?

A. I really can't recall.

Q. Anyone else from Cleary who participated in any of these calls?

A. On Sunday night, I don't think so.

Q. Do you recall anything that Archie Cox said on any of these calls?

TSG Reporting - Worldwide 877-702-9580

<p style="text-align: right;">Page 130</p> <p>1 ROSEN</p> <p>2 A. He conveyed Barclays' reluctance to</p> <p>3 assume the obligation to provide any form of</p> <p>4 guarantee beyond the 250 million dollars</p> <p>5 representing the holdback of that payment that</p> <p>6 would otherwise have been made to Lehman under</p> <p>7 the APA, and there would have been -- there was</p> <p>8 a call -- there was a point at which he said, he</p> <p>9 conveyed to DTCC that because Barclays was not</p> <p>10 willing to accept more liability than that, they</p> <p>11 would not be accepting the transfer of those</p> <p>12 accounts.</p> <p>13 Q. Anything else you remember Mr. Cox</p> <p>14 saying in any of the Sunday night calls?</p> <p>15 A. I really don't recall specifics.</p> <p>16 There was undoubtedly a lot more discussed and a</p> <p>17 lot more give and take, but candidly, I cannot</p> <p>18 remember the specifics of the dialogues. There</p> <p>19 would have been conversations about, gee, does</p> <p>20 DTCC really need all the credit support that it</p> <p>21 is asking for, can't it get comfortable, it has</p> <p>22 better access to the information than Barclays</p> <p>23 does. It would have been of that nature, but I</p> <p>24 just, sitting here now, can't recall the</p> <p>25 conversations.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 131</p> <p>1 ROSEN</p> <p>2 Q. Anything you recall Jonathan Hughes</p> <p>3 saying?</p> <p>4 A. Not really. I don't have a specific</p> <p>5 recollection. I think -- I'm sure that he</p> <p>6 reiterated or articulated many of the same</p> <p>7 themes as Archie Cox, because the Barclays view</p> <p>8 was, at that point, pretty well settled that</p> <p>9 they were not prepared to assume additional</p> <p>10 potentially substantial liabilities.</p> <p>11 Q. Anything you recall Mr. Hughes saying</p> <p>12 beyond what you said?</p> <p>13 A. Not specific words, no.</p> <p>14 Q. Anything you recall Michael Klein</p> <p>15 saying?</p> <p>16 A. No.</p> <p>17 Q. Anything you recall Mr. Larocca</p> <p>18 saying?</p> <p>19 A. Well, there were a lot of</p> <p>20 conversations also about sort of the pipes and</p> <p>21 the plumbing and sort of the operational aspects</p> <p>22 of what was going to be the mechanism for DTC</p> <p>23 to effect the transfers of securities that needed</p> <p>24 to be effected as part of the transactions, what</p> <p>25 accountant are they going to go to or through,</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
<p style="text-align: right;">Page 132</p> <p>1 ROSEN</p> <p>2 or how that was going to be hooked up or</p> <p>3 handled, but I was not focused on those because</p> <p>4 I regarded them as essentially operational</p> <p>5 matters.</p> <p>6 Q. Was that an issue that was in</p> <p>7 Mr. Larocca's purview?</p> <p>8 A. Yes, I think so -- yes.</p> <p>9 Q. Did he speak to that?</p> <p>10 A. He did, and he may have delegated some</p> <p>11 of the details of it to people who reported to</p> <p>12 him.</p> <p>13 Q. Do you recall Mr. Larocca saying in</p> <p>14 any call on Sunday night or early Monday morning</p> <p>15 we are not taking anything?</p> <p>16 A. I do not recall Gerard Larocca saying</p> <p>17 that or anyone else saying that, because it</p> <p>18 was -- the whole purpose of the DTC endeavor was</p> <p>19 to resolve their concerns in a manner that would</p> <p>20 enable them to effect the transfers of assets</p> <p>21 that were necessary to consummate the deal. So</p> <p>22 it would have been a ludicrous thing for anyone</p> <p>23 to have said, because otherwise, why did we need</p> <p>24 to be dealing with DTCC?</p> <p>25 Q. Was anyone from DTCC present for any</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 133</p> <p>1 ROSEN</p> <p>2 of these discussions?</p> <p>3 A. These -- they were on the phone.</p> <p>4 There was nobody from DTCC in the room at Weil's</p> <p>5 offices.</p> <p>6 Q. Who did you understand was</p> <p>7 participating from DTCC?</p> <p>8 A. My understanding was that it was Larry</p> <p>9 Thompson, the general counsel; his deputy, Isaac</p> <p>10 Montal, Shelly Hirshon, their outside counsel,</p> <p>11 and Don Donahue, the chairman of DTCC, at least</p> <p>12 at some -- at least in some portions of the</p> <p>13 conversation.</p> <p>14 Q. And who was the person who did most of</p> <p>15 the talking for DTCC?</p> <p>16 A. My recollection was that it was Larry</p> <p>17 Thompson.</p> <p>18 Q. Did you understand at some point, DTCC</p> <p>19 was considering issuing a cease to act with</p> <p>20 respect to Lehman?</p> <p>21 MR. MORAG: Object to the form.</p> <p>22 A. After Barclays had conveyed to DTCC</p> <p>23 that Barclays was not going to accept a transfer</p> <p>24 of the accounts, I believe Larry Thompson</p> <p>25 indicated -- and I don't recall exactly when</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

ROSEN

this was -- that they would issue a cease to act, which meant that once the pipeline and these transactions were transferred, DTCC would be liquidating positions and closing out the account and not accepting any other transactions.

And I received a call from Don Donahue to say, you know, if we could avoid doing that, they would prefer to do that, because they hadn't done it before, and which I told him I would convey to the client.

Q. Do you have an understanding of what the consequences would be for the transaction if the DTCC were to issue a cease to act notice?

MR. MORAG: Objection to form.

A. My understanding is that it wouldn't have affected the transaction.

Q. Did you have any discussion with anyone as to whether Barclays could or would close the transaction if DTCC issued a cease to act notice?

MR. MORAG: Again, Mr. Rosen, if your discussions are with anybody outside of Barclays, you can answer. Not -- if not,
TSG Reporting - Worldwide 877-702-9580

ROSEN

say you are not able to answer.

A. Would you mind repeating the question.

Q. Yes. The question is whether you had any discussion, any conversation with anyone about whether Barclays could or would close the transaction if DTCC were to issue a cease to act.

MR. MORAG: Do you have a time frame on when the issuance was supposed to be?

A. It really --

Q. Yes, the Sunday.

A. Can I just -- let me just say this.

It really depends. Your question presupposes with respect to what point in time the cease to act would take effect.

If -- I did have a conversation with Shari Leventhal at the Fed, which the substance of which was that I expressed my concern that we were not making rapid progress in the negotiations with DTCC toward a resolution in which they would accept a much more limited amount of credit support, and I was worried that we were running out of time, and we thought that it might be helpful to let the Fed know, that we
TSG Reporting - Worldwide 877-702-9580

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didn't want the Fed to find out at the last minute that this thing was falling apart for reasons unrelated to, you know, the actual negotiation of the deal, that because of a problem with DTCC.

So I spoke to Shari Leventhal and said, if we can't reach a resolution with DTCC and DTCC does not agree to process the transactions, absent other arrangements, we are not going to be able to close this, at least in the manner in which we had contemplated.

And I did have that conversation with her.

Q. Can you help me out and explain, because I thought you had told us that a cease to act from DTCC would not have affected the transaction, but I thought you also told us --

A. I also told you it depends at what point they are ceasing to act. And if they cease to act following the processing of the transaction and the transactions that are in their pipeline, we would have been able to close the transaction. If they said as of Saturday, we are ceasing to act and we are not going to
TSG Reporting - Worldwide 877-702-9580

ROSEN

accept any other instructions on Monday to transfer customer or proprietary agents, that would have been a very different result than the one which ultimately obtained.

Q. And when you told us earlier that after Barclays had made clear it was not accepting the transfer of accounts and Larry Thompson responded that DTCC would issue a cease to act, what did you understand the timing of that notice that he was talking about to be?

A. My understanding was that DTCC was going to issue a cease to act after processing trades in the pipeline, including the transfers that were necessary to implement the deal, and that there had been operational calls, my understanding was to sort of discuss the plumbing and how you accomplish that.

Q. So Mr. Thompson was simply telling you that they would issue a cease to act after clearing all the pipelines, all the uncleared trades after the closing?

A. Yeah, I didn't think -- I did not understand him to be saying -- well, I'm going to add some clarification to this. There was a
TSG Reporting - Worldwide 877-702-9580

ROSEN

point at which we were not, we did not have a meeting of the minds with DTC about what, in addition to 250, Barclays might make available, and DTC, DTCC was not, had not yet agreed to accept only the 250 million, so you had two parties who were -- who lacked a meeting of the minds.

In that context, Larry Thompson may well have said basically, you know, if we don't get what we want, we are just going to cease to act and you are going to have to figure things out for yourself. That was some of the need to deal with that issue, so we could close expeditiously and not have to create some kind of a work-around, was precisely why we continued the negotiations until DTCC would be willing to process the transactions that were in the pipeline and transactions that are associated with this deal.

Q. Was that comment by Mr. Thompson about what they would do if they didn't get what they wanted, was that in response to hearing from Barclays that Barclays was not accepting transfer of the accounts?

TSG Reporting - Worldwide 877-702-9580

ROSEN

A. Again, you have got to focus on the time. I think at some point it was made clear that not having the credit support meant that after the cease to act, when a meeting of the -- when DTCC agreed that on the understanding that it was going to get the 250 million in credit support but no more, the fact that they would have to cease to act was never presented by him as, you know, something that would have precluded the very reason that we were having the negotiations, in order to enable the transaction to close by processing and making the transfers.

Q. Let me try --

A. You couldn't accept a transfer of customer accounts and get that business if the accounts couldn't be -- and the assets in them couldn't be transferred by DTCC. Everybody realized that they had to agree to do that and not shut the pipes down.

Q. Yeah, I'm not interested in what would or could have happened. I want to get the sequence of your recollection down right.

I understand that on Sunday night at
TSG Reporting - Worldwide 877-702-9580

ROSEN

some point, Archie Cox described to DTCC Barclays' reluctance to assume the accounts and made plain that Barclays was not accepting the transfer of the accounts of DTCC?

A. Yes.

Q. That's correct?

Now, what was -- in response to that, did Mr. Thompson say in words or substance if DTCC can't get happy, it will issue a cease to act?

A. I don't recall it being specifically in response to the -- you know, the articulation of the final position or whether it occurred in the course of earlier assertions of the position. But it was clear in their minds that if they didn't have a -- if they did not have adequate credit support or a viable creditworthy clearing member, that they were not going to take the risk of just carrying the accounts open and continuing to accept positions. They would have to go through the process that they described as ceasing to act.

Q. And they made that clear to Barclays?

A. Yes.

TSG Reporting - Worldwide 877-702-9580

ROSEN

Q. Can you tell me, what happened or what was the event that triggered the decision by Barclays that it would not accept a transfer of accounts at DTCC?

MR. MORAG: I caution you from disclosing any privileged communications.

A. Can I consult on the privilege question?

Q. Sure.

(Recess)

Q. Would you like the question, sir? Can you tell me what happened or what was the event that triggered the decision by Barclays that it would not accept a transfer of accounts at DTCC?

A. After the report from the operations team, of the operations team to their principal, their principals, Archie Cox, the decision was made that they would not -- they would not accept the possibility of liabilities in excess of 250 million dollars, and they confirmed to DTCC that they were firm on their position they weren't going to accept the accounts.

Q. When was the report of the operations team received?

TSG Reporting - Worldwide 877-702-9580

ROSEN

A. Other than that it was earlier in the evening on Sunday, but possibly late, I don't have a specific recollection.

Q. Do you have any sense of the timing as to when a decision was made by Barclays that it would not accept any liabilities beyond the 250 million?

A. Well, I think internally they had reached that position -- we were trying in good faith to see whether they could get enough information to make them comfortable, but it was finally communicated that they were firm on the 250 and not accepting the accounts, maybe like 11 o'clock, something like -- it was quite late on Sunday night.

Q. And was that Mr. Cox who conveyed that to DTCC?

A. I believe so, I believe so.

Q. Was Larry Thompson on the call in which --

A. I believe so.

Q. He was?

A. I believe so.

Q. Did Mr. Thompson make a reference to TSG Reporting - Worldwide 877-702-9580

ROSEN

issuing a cease to act on that call?

A. I don't recall him specifically making a reference at that time in response to it. But to be clear, the understanding was that the cease to act was not in respect of the processing of any of the transactions that -- any of the -- processing any of the transfers that were part of the transaction.

Q. Now, when did you have the call with Shari Leventhal?

A. Earlier in the evening. Whether it was at 5 o'clock or 8 o'clock or 9 o'clock, I don't honestly recall.

Q. Did you have any follow-up call with her?

A. I don't recall that I had a follow-on, one-on-one call with Shari. It's possible that I did, but they were on the open line which was established for the purpose of reporting to all people who needed to know simultaneously, because we were under a very tight time frame, sort of what was open and what was being agreed.

There was an open line with the Fed and the SEC and other interested parties, and I TSG Reporting - Worldwide 877-702-9580

ROSEN

believe that at least at some point, she was on to hear the results of the negotiations. She may have gotten information from DTCC, I just don't recall specifically.

Q. Can you tell me what else you recall Larry Thompson saying in the various conversations on Sunday night?

A. For the most part, I recall him justifying their need for collateral in excess of the 250 million dollars. That was the point at which they were willing to go forward on that basis.

Q. How did he justify that?

A. That they were -- his team, you know, were concerned about the risks.

Q. Do you recall anything specifically said about the risks?

A. Mostly my recollection is, you know, there is uncertainty, there is a lot in there to do, it would take time, we can't know exactly what the results of the liquidations will be. I mean they are a clearinghouse, they are a conservative organization, and they viewed the risk conservatively.

TSG Reporting - Worldwide 877-702-9580

ROSEN

Q. Do you recall him saying anything further about a cease to act other than what you have told us?

A. Nothing beyond what I told you.

Q. Do you recall saying, addressing specifically the subject of whether the -- of when the cease to act would take effect and the impact that it would have on the transaction or on the unsettled trades that were at DTCC?

MR. MORAG: Objection, asked and answered.

A. He never suggested that there would be any impact as the transaction was resolved. The purpose of the resolution was that there would be no impact.

Q. Did he ever address whether the cease to act would have an impact on outstanding unsettled trades?

A. Mostly what I recall him focusing on was they don't like to cease to act because it means that other participants in the marketplace aren't going to receive the benefit of the processing that they would otherwise do when those transactions came in, and hadn't had to do TSG Reporting - Worldwide 877-702-9580

ROSEN

it in the past.

My impression was that they were more concerned about the public relations implications of a clearing corporation doing that than they were focused on any impact on us, because it was a mutual premise that the purpose of this was to enable us to close and process the transactions.

Q. Did he ever say anything to indicate that his references to cease to act related exclusively to a notice that would come into effect after the closing and after all of the unprocessed, unsettled trades of Lehman had been cleared by DTCC?

MR. MORAG: Object to the form.

A. I think in going over the terms of the arrangements it was clear that the transactions that were the subject of the acquisition, those transfers were going to be made, and I don't think there was any implication of any kind, it would have been absurd for there to have been an implication that we reached an agreement with DTC and by the way, they were going to not process the transactions.

TSG Reporting - Worldwide 877-702-9580

ROSEN

Q. Let me ask you about the time period prior to reaching a meeting of the minds with DTCC. At any time before that, did he give any representation or assurance to Barclays that while DTCC might issue a cease to act, it would not affect the transaction, and that they would honor and process all unsettled trades? Did he say that in words or substance?

A. I am sorry, can you repeat that.

Q. Yes. At any time prior to the meeting of the minds between Barclays and DTCC, did Larry Thompson in words or substance say, we may have to issue a cease to act, but it will not affect the transaction, and notwithstanding our cease to act, we will make sure that it takes effect only after all unsettled trades have been cleared?

A. No. I think that if the -- if we hadn't reached an agreement with DTCC, then we had, we had the prospect of having to figure out another way of consummating the transaction if they were not going to process trades, and basically what DTCC was saying was that if they were going to continue to process trades and act

TSG Reporting - Worldwide 877-702-9580

ROSEN

for these accounts, then they wanted more credit support than they would have if they were left to look only to the assets of LBI.

Q. Is there anything further you recall Larry Thompson saying on the Sunday night other than what you have told us?

A. I'm sure there is a lot more that could be said. I just don't have a specific recollection of that.

Q. And all my questions are just to your recollection.

What about Mr. Montal? Do you recall anything that Mr. Montal said in any of the conversations on Sunday night or early Monday morning?

A. He was not a prominent speaker, at least while I was in the room.

Q. Anything that you recall?

A. I don't have a specific recollection of what he might have said.

Q. What about Shelly Hirshon?

A. I don't remember Shelly Hirshon speaking of it.

Q. You did tell us about Don Donahue

TSG Reporting - Worldwide 877-702-9580

ROSEN

making a call to you. Anything else that you recall hearing from Dan Donahue on the Sunday night?

A. No. No more than that conversation.

Q. I have been asking you now about the conversations with DTC for some time limited to the Sunday night, and I know that there were conversations that may have spilled over into the wee hours of early morning. So if we include Monday morning, are there any conversations by any of the participants that you recall that you haven't told us about?

A. I have a vague recollection that there may have been continuing discussions on the operations side in anticipation of the closing of the transaction, and the balance of the exchanges were between the lawyers trying to reflect what had been agreed in I think what's become or been referred to as the DTCC letter.

Q. And anything else, if you recall?

A. Not that I specifically recall, sitting here.

Q. We will mark as Exhibit 625 a document Bates stamped DTCC 00359 through 361.

TSG Reporting - Worldwide 877-702-9580

ROSEN

(Exhibit 625, document Bates stamped
DTCC 00359 through 361 marked for
identification, as of this date.)

A. I recall this.

**Q. If you look at the e-mail at the top,
the first page, sir. Can you tell me what you
meant when you said, "The obligations and
entitlements in relation to the funds run
between DTC and the LBI estate, not between
Barclays and DTC"?**

A. Because the credit support was going
to be limited to the 250 million dollar cash
payment, we thought that since we could direct
that payment, I thought that since it was
possible to direct that payment on Lehman's
behalf, so that the DTC got hold of it, it
was -- as far as the transaction was concerned,
that was an asset of -- that would otherwise
have been an asset of the estate that was being
made available to provide credit support, and
since it would otherwise have been an asset,
that the arrangements relating to that were
between Lehman and DTC and didn't need to be
between Barclays.

TSG Reporting - Worldwide 877-702-9580

ROSEN

So my feeling was that to keep things
simple, we didn't really need to have a separate
agreement.

**Q. Let me show you a document that's
previously been marked as Exhibit 606.**

**While we are waiting for that, sir,
how did the impasse between Barclays and DTC get
resolved? How did the parties reach a meeting
of the minds?**

A. There were conversations staking out
positions. The parties would go off. There was
due diligence being done on both sides, because
both sides wanted to know what the risks were,
and they would get back on the telephone, and at
some point, DTC decided that the position that
had been articulated by Barclays was acceptable
to it.

**Q. So DTC had previously refused to
accept Barclays' position of limiting the
recourse to 250 million, but it changed its mind
at some point on the Sunday or early Monday?**

A. Until late on Sunday night, DTC had
not signaled its agreement to go forward based
on the 250 million dollars.

TSG Reporting - Worldwide 877-702-9580

ROSEN

Q. How did DTCC signal its agreement?

A. On a conference call, it -- Larry
Thompson said, we are willing to go forward on
this basis.

**Q. And what was the specific thing he
said with respect to the basis?**

A. That Barclays would not be assuming
the accounts and that the credit support that
would be made available would be limited to the
250 million dollar holdback on the purchase, on
the 250 million dollars.

**Q. Is that something that you recall
Larry Thompson specifically saying?**

A. I could be wrong, but that's my
recollection. My recollection is that Larry was
largely the spokesperson for DTC.

**Q. And did Larry explain what prompted
DTCC to change its position?**

A. No. I don't recall -- I don't recall
having an explanation from him.

**Q. Did you have any understanding as to
what prompted DTCC to change its position?**

A. I assume that -- all I can say is that
I assumed with more time, they got a better

TSG Reporting - Worldwide 877-702-9580

ROSEN

understanding of what the assets and the risks
were, and assumed that they decided that would
be acceptable for them, to take the liquidation
risk with the assets that they had in the
250 million.

But he didn't give us a
quantitative -- he didn't share his quantitative
analysis of their evaluation of that risk, nor
did we expect them to.

**Q. When did this meeting of the minds
conversation happen?**

A. It was very late on Sunday night.
Sometime before midnight, I think.

**Q. Do you know whether it was before
midnight or after midnight?**

A. I would have to refresh my
recollection.

Q. How would you do that?

A. I would look at the e-mail traffic.

Q. Anything else?

A. I think that is all that I would have
available to me today to help.

**Q. I show you a document previously
marked as Exhibit 606. Sir, you received this**

TSG Reporting - Worldwide 877-702-9580

ROSEN

e-mail?

A. Yes.

Q. Does it -- do you see the reference to "earlier this evening," the first line? Does that refresh your recollection as to -- the first line of the e-mail, cover e-mail, does that refresh your recollection as to when the agreement was reached?

A. Well, I know it was before 3:43 a.m. How much before -- I remember we felt that we tended to wait a long time to get drafts back from the other side, but I don't recall.

Q. Who prepared this draft?

A. This was -- it appears to have been prepared by DTC or its counsel, but I don't know specifically.

Q. Did you have any discussions with DTCC or its counsel anytime after receiving this e-mail?

A. Most of the direct negotiations regarding this were conducted by my partner Mike Mazzuchi. I did exchange e-mails including, I guess it was slightly earlier in the evening, with Sheldon Hirshon. There may have been later
TSG Reporting - Worldwide 877-702-9580

ROSEN

e-mails exchanges, I don't recall.

Q. Leaving aside e-mails, do you know whether Mike Mazzuchi had discussions with anyone at DTCC after circulating or the circulation of this draft that has been marked as Exhibit 606?

A. Well, with their counsel, certainly. I don't recall whether or not he was, he had conversations that included individuals from DTCC.

Q. Do you know what conversations he had with their counsel?

A. Other than to discuss changes to this document prior to its finalization, I don't.

Q. And do you know whether there were in fact discussions as opposed to e-mail exchanges?

A. I don't -- I think it was principally exchanges of drafts. It was very late and people were very tired.

Q. If you turn to paragraph 1, sir, the winding down of accounts. Did you review this at the time?

A. I don't recall specifically whether I looked at this draft or a subsequent draft.

TSG Reporting - Worldwide 877-702-9580

ROSEN

Q. Did you understand that, at the time this draft was received, that there was an agreement, a meeting of the minds between Barclays and DTC whereby all of the assets in the Lehman accounts at DTC were going to go to Barclays and the accounts themselves were going to stay at DTCC?

MR. MORAG: Object to the form.

A. Could you repeat the question.

Q. Did you have an understanding at the time you received this e-mail that there had -- there was an agreement, a meeting of the minds between Barclays and DTCC?

MR. MORAG: That's the only question?

MR. MAGUIRE: Yes.

A. Yes.

Q. And did you understand that that agreement involved the accounts, the Lehman accounts staying at Lehman and at DTC?

A. Yes.

Q. Did you understand what was happening to the assets in those accounts?

A. Insofar as Barclays was concerned, our understanding was that the assets, whether they
TSG Reporting - Worldwide 877-702-9580

ROSEN

were proprietary assets or customer assets that under the deal terms were to be transferred, would be processed.

Q. And once those transactions were all processed, who owned the assets in the Lehman accounts at DTCC?

A. The residual assets that were not to be -- whatever we didn't -- whatever Barclays didn't buy or acquire was part of the Lehman estate.

Q. Did you have an understanding as to whether Barclays was acquiring any of the assets at the -- in the DTCC clearance boxes?

A. Yes. Yes, my understanding is that they were acquiring those assets.

Q. And so that at the closing, those assets would then belong to Barclays?

A. Contractually, yes, at the closing there would have been an agreement to transfer them to Barclays, an understanding that those transactions would be processed by DTCC and not be subject to a cease to act.

Q. And was that explained to the DTCC, that the assets in the Lehman accounts would

TSG Reporting - Worldwide 877-702-9580

ROSEN

contractually belong to Barclays at closing?

A. The DTCC was provided at their request a draft of the agreement that reflected the -- what do you call it? -- that reflected the agreements to transfer the clearance box assets as part of the deal.

Q. A draft of the clarification letter?

A. A draft of the letter, right.

Q. Other than providing the DTCC with a draft of the clarification letter, did anyone on the Barclays side explain to DTCC that the assets --

A. I believe that that was the subject of discussions on an operational level, because they wanted to impose a cease to act at some point, and they had to figure out a way to effect the transfers and do whatever else that they wanted to do under their rules.

Q. Did you participate in any of the operations conversations in which anyone from the Barclays side explained to anyone on the DTCC side that all of the assets at, in the Lehman accounts at DTCC were being acquired by Barclays?

TSG Reporting - Worldwide 877-702-9580

ROSEN

A. No, I don't think that I said that all of the assets in those accounts were being acquired. There are some assets that were being acquired, some assets that were not being acquired. There were customer accounts that were being transferred and presumably other customer accounts that were not part of the deal. I mean customer securities.

That was dealt with in the clarification letter. What Lehman was and was not selling to Barclays was not the subject of the DTCC letter. The DTCC letter from the beginning was about financial responsibilities to DTCC for the liabilities associated with those accounts.

Q. And did anyone explain to DTCC that Barclays understood there to be a distinction between the accounts and the assets in the accounts?

A. It would have been an absurd conversation to have with a clearing corporation, because a clearing corporation is basically structured fundamentally on the premise that there is a difference between legal TSG Reporting - Worldwide 877-702-9580

ROSEN

ownership and responsibility for accounts and beneficial ownership and entitlement to the assets in the accounts.

Without that distinction, every person who owns a security in the United States in order to own it would have to be a clearing member of a clearing corporation, which is not how we would realize our financial markets.

Q. You are not aware of any conversation between anyone at Barclays, working for Barclays, and anyone at DTCC concerning any distinction between the Lehman accounts and the assets in the Lehman accounts at DTCC?

MR. HUME: Objection, asked and answered.

A. I don't have anything to add.

Q. Did it come to your attention that DTCC was of the understanding that the assets in the Lehman account were remaining with the estate?

A. It is impossible for me to understand how they could have formed that view or that they -- and I am unaware that they did form that view.

TSG Reporting - Worldwide 877-702-9580

ROSEN

Q. If you look, sir, at paragraph 1 of the draft before you marked as Exhibit 606, you will see the second part of that section 1, same paragraph really of that section 1, says, "As part of this closeout process, the trustee hereby authorizes DTC to accept and act upon instructions from NSCC to deliver securities from the DTC LBI account to NSCC's account," and it goes on. Do you see that sentence?

A. I do.

Q. Can you explain why the parties were providing for the trustee to exercise authority over assets in the Lehman account if those assets contractually were understood all along to belong to Barclays?

MR. MORAG: Objection, mischaracterizes his testimony. For the third time.

A. And I think you're asking me to interpret what the import of this is, because I don't accept your characterization of what this does or -- what this provision does or says.

Q. So you would --

A. I think I would decline to answer on

TSG Reporting - Worldwide 877-702-9580

ROSEN

the grounds that I think my interpretation of this provision would be privileged.

Q. At the time that this draft was received, did you understand that Barclays was taking -- was cherry picking or at least taking certain assets from the clearance box and not other assets, or at least that it had that option?

MR. MORAG: Objection, compound.

A. Why don't you ask the first question.

Q. Sure. What I am trying to understand is, at the time that this draft is circulated, what is your understanding of the business deal between Barclays and the estate?

A. I was not -- I was not aware -- I don't know it to be the case, sitting here today, that there were clearance box assets that Barclays had decided they didn't want.

Q. Did you understand that Barclays had the ability to either return or not take certain clearance box assets?

A. I'm not sure at that time that I had focused on the language that you showed me earlier today.

TSG Reporting - Worldwide 877-702-9580

ROSEN

Q. Did you raise any question with DTCC or anyone else as to why there was not any mechanism here for separating out the assets that were being taken by Barclays and the assets that Barclays did not choose to take from the DTC clearance boxes?

A. No, because at that point, I was under the impression that Barclays was taking all of the clearance box assets, which it was their ability to do or not do, as they decided at any time. I think there was a lack of -- I don't know how clearly it was understood what all of those assets were.

Q. I'll show you next a document that has been marked as Exhibit 607.

MR. HUME: How much more do you have?

And would it make sense to take a break at some point afternoon then finish?

MR. MAGUIRE: I can finish this in five minutes and that might be a better time to take a break.

Q. This is an e-mail that your colleague, Mr. Mazzuchi circulated?

A. Um-hm.

TSG Reporting - Worldwide 877-702-9580

ROSEN

Q. I note in this draft and the prior draft, there is a signature line for James B. Giddens as trustee for the liquidation of Lehman Brothers. And the signature line is for James B. Kobak, Jr. Do you see that?

A. Um-hm.

Q. Did you have any discussions with Mr. Kobak concerning this agreement?

A. I did not have a verbal conversation with James Kobak about this agreement, but he was provided the various drafts that were exchanged.

Q. And made comments?

A. As far as I'm aware, yes.

Q. You see Mr. Mazzuchi's cover e-mail says, "Further to Ed Rosen's discussion with Sheldon, attached is a revised draft of the recourse arrangement for the 250 million dollar purchase price. This also reflects comments from Lehman."

Did you understand that to be a reference to comments from the trustee's representatives?

A. I don't know.

TSG Reporting - Worldwide 877-702-9580

ROSEN

Q. Do you know whether this agreement was discussed with anyone from Weil Gotshal?

WITNESS' ATTORNEY: Are you referring to the DTC letter in general or this draft in particular?

Q. The DTC letter in general.

A. I do not recall.

Q. Do you know whether Weil was provided with any draft of the DTC letter agreement?

A. Yes, it would have been on the closing table and it may have been provided separately by Shelly Hirshorn.

Q. Other than it being on the closing table and whether Mr. Hirshorn did or did not provide it, do you though whether anyone otherwise provided either the final agreement or a draft of the DTC later agreement to anyone at Weil?

A. I don't have a recollection. They may well have been in the room. The rooms weren't closed off. They may have participated in reviewing the exchanges of draft. I just don't have a specific recollection. Again, at this time, I was in and out of the documentation,

TSG Reporting - Worldwide 877-702-9580

ROSEN

also working on other problems.

Q. In which room was the DTC letter agreement put together -- speaking now to Cleary and the Barclays representatives -- which room at Weil were you working in?

WITNESS' ATTORNEY: Objection, compound. It is two different questions.

A. Yeah, I don't know how to describe, there was a room on a floor and I was not located in a particular room. I jockeyed between several rooms.

Q. Where was the, speaking specifically now to the DTCC negotiations, telephone calls and the drafting, in which room did that happen?

A. That happened in a room on a different floor.

Q. Do you know what floor?

A. I believe it was the floor below the floor where the other meetings were taking place.

Q. Were there any other Lehman-related conference rooms in use on that lower floor?

A. I don't, I don't recall.

Q. Did anyone from Cleary instruct anyone

TSG Reporting - Worldwide 877-702-9580

ROSEN

from Weil that they were not permitted into that room?

A. No, not that I am aware.

Q. Have you -- at the beginning of Mr. Mazzuchi's e-mail, he says, "Further to Ed Rosen's discussion with Sheldon," do you know what that discussion refers to?

A. I think it refers to the same issue that's reflected in the earlier exchange of e-mail in which we were taking the view that this was a limited recourse form of credit support and not a guarantee of Barclays. This was an asset that would otherwise have been paid to the estate as part of the transaction that was being made available to secure additional credit support to DTCC and its related affiliates, and I thought that describing it as a guarantee by Barclays was not entirely accurate.

Q. OK.

MR. MAGUIRE: This is probably a good time to take a break.

(Recess)

Q. I will show you a document we have

TSG Reporting - Worldwide 877-702-9580

ROSEN

previously marked as Exhibit 563C. Have you ever seen that letter before?

A. Again, yes, without verifying how closely it tracks the actual agreement.

Q. If you turn, sir, to page 4, there is a sentence beginning at the first full paragraph that starts, "By Sunday night, September 21." Do you see that sentence?

A. Um-hm, yes.

Q. I give that to you as background. My question is whether on any of the Sunday night or Monday morning conversations anyone from DTCC said in words, substance that they believed that DTCC's exposure to Lehman from processing the remaining transactions was substantially less than it originally feared?

A. I think implicitly by them saying they had become comfortable with the internal review that they were doing, they would be willing to close the transaction with 250 million.

Q. So the fact that there was a meeting of the minds suggests that DTCC had become more comfortable with its exposure?

A. They may have said that we have

TSG Reporting - Worldwide 877-702-9580

ROSEN

continued to review this and we have gotten to that point based on the review. I don't recall specifically.

Q. Do you have any recollection of that?

MR. HUME: Objection, asked and answered.

Q. The reason I ask is because you say specifically?

A. I have an impression that that was what was conveyed, that they had gotten comfortable with the risk. But I don't have a specific recollection of a specific articulation from the calls.

Q. I'll show you a document that has previously been marked as Exhibit 156B. It is actually not entirely clear, but it is a letter from Cleary Gottlieb dated March 6, 2009. Do you know whether you have ever seen that letter before, sir?

A. I may have seen a draft of this letter. I don't have a specific recollection.

Q. My only questions, sir, are with respect to page 3 of this letter, the second full sentence on page 3, starts, "Nothing in

TSG Reporting - Worldwide 877-702-9580

Page 170	Page 171
<p>1 ROSEN</p> <p>2 this letter or in Exhibit B should be construed</p> <p>3 to suggest."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Do you have an understanding, sir, as</p> <p>7 to what that sentence means, of Mr. Kobak's</p> <p>8 letter?</p> <p>9 A. To be honest with you, I would have to</p> <p>10 look at -- I would have to read the entire</p> <p>11 letter in order to put that sentence in context.</p> <p>12 WITNESS' ATTORNEY: Maybe we could</p> <p>13 discuss this off the record and I could</p> <p>14 explain it to you.</p> <p>15 Q. Sure, that would be helpful. Let me</p> <p>16 just ask you then if you have an understanding</p> <p>17 that the securities in the Lehman -- that</p> <p>18 Barclays acquired the securities in the Lehman</p> <p>19 clearance boxes at the time of closing</p> <p>20 regardless of whether any customers had long</p> <p>21 positions in those securities?</p> <p>22 MR. HUME: I think you're asking the</p> <p>23 witness to interpret the contract when you</p> <p>24 ask that question. If you want to ask him a</p> <p>25 factual question about a discussion, that's</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 fine, but to interpret precisely which</p> <p>3 securities are covered by the clearance box</p> <p>4 provision of the clarification letter just</p> <p>5 seems like you're asking him a legal</p> <p>6 interpretation question.</p> <p>7 Q. You can answer.</p> <p>8 MR. HUME: Well, you can't answer to</p> <p>9 the extent it would reveal attorney work</p> <p>10 product analysis that we have done and I</p> <p>11 think beyond that --</p> <p>12 A. I think answering the question would</p> <p>13 call for me to interpret the contractual</p> <p>14 documents.</p> <p>15 Q. Let me leave aside the contractual</p> <p>16 documents. Just as a matter of the business</p> <p>17 deal that was negotiated, did you understand the</p> <p>18 business agreement between the parties was that</p> <p>19 Barclays was getting the assets in the clearance</p> <p>20 boxes that were not owned by customers or did</p> <p>21 you understand that Barclays was getting the</p> <p>22 assets in the clearance boxes notwithstanding</p> <p>23 whether any customer had had a long position?</p> <p>24 A. My understanding was that they were</p> <p>25 getting what was in the clearance boxes.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 172	Page 173
<p>1 ROSEN</p> <p>2 Q. And that's regardless of what</p> <p>3 customers had long positions in those</p> <p>4 securities?</p> <p>5 A. It is based on there being lien-free</p> <p>6 securities.</p> <p>7 Q. So the fact that customers had long</p> <p>8 positions did not affect Barclays' rights?</p> <p>9 A. I think you're asking me to interpret</p> <p>10 the implications of those provisions in the</p> <p>11 clearance box, relating to the clearance box.</p> <p>12 Q. I'm just asking you to tell me what</p> <p>13 you just told me?</p> <p>14 A. You're asking me to interpret whether</p> <p>15 the reference to the clearance box, the extent</p> <p>16 to which it covered certain kinds of assets and</p> <p>17 that's asking me to interpret a term of the</p> <p>18 agreement.</p> <p>19 Q. Leaving aside the agreement, just the</p> <p>20 business deal, just the business deal between</p> <p>21 the parties, did you understand --</p> <p>22 A. The business deal, as far as I was</p> <p>23 aware, did not include a limitation on the</p> <p>24 clearance box assets that Barclays was getting</p> <p>25 as far as I recall.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 MR. MAGUIRE: We will mark as Exhibit</p> <p>3 626 a document Bates stamped BCI-CG 0024097</p> <p>4 through 99.</p> <p>5 (Exhibit 626, document Bates stamped</p> <p>6 BCI-CG 00024097 through 99 marked for</p> <p>7 identification, as of this date.)</p> <p>8 Q. Had you received this e-mail chain</p> <p>9 from Mr. McDaniel, sir?</p> <p>10 A. I did.</p> <p>11 Q. And you had learned at some point that</p> <p>12 there was 1 billion dollars in cash margin at</p> <p>13 the OCC?</p> <p>14 A. Could you repeat your question.</p> <p>15 Q. Yes, you learned at some point there</p> <p>16 was 1 billion dollars in cash that the OCC was</p> <p>17 holding for the accounts of LBI?</p> <p>18 A. That is in here, yes.</p> <p>19 Q. And that was in addition to government</p> <p>20 securities that were being held at JP Morgan</p> <p>21 Chase?</p> <p>22 A. It presumably is additional to any</p> <p>23 other collateral that would have been noncash.</p> <p>24 Q. And you asked Jim for more information</p> <p>25 about the 1 billion dollars?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

ROSEN

WITNESS' ATTORNEY: Object to the characterization.

Q. Specifically, you asked him whether it was excess margin?

A. Yeah.

Q. Tell me why you asked that question.

A. Yes. Barclays was -- by agreeing to step into Lehman's shoes under the TAA, it was stepping into the responsibility to perform all of the obligations for all positions that were in the account up until the day at some point in the future when the positions in the account were ultimately liquidated and there was no further exposure.

One of the things that I was trying to ascertain was whether or not, if Barclays stepped into the -- into Lehman's shoes, whether in addition to the ongoing liabilities that it was going to assume while the positions in those accounts were outstanding, it was stepping into a day one liability, and in addition, the extent to which there was what would have been from OCC's perspective an excess requirement which is not necessarily obviously the same as whether
TSG Reporting - Worldwide 877-702-9580

ROSEN

there is an excess from the clearing brokers' requirement.

There are very few, if any, clearing brokers who limit the amount of margin that they collect across their customer base to the amount that's required at the clearing house, particularly in the case of less creditworthy customers. So this was part of an endeavor to get our arms around how much potential liability Barclays might be stepping into in taking on these accounts.

Q. And what did you learn?

A. Not a lot. Not as much as we would have liked to have learned. What we learned was that over the weekend, I received an e-mail that suggested that there was -- it was an e-mail forwarded to me by Bill Navin, I'm sure it is in the record, that it looked like there were net in-flows to the clearing accounts expected on Monday at the open of business.

So that suggested to me that if we closed on Monday morning, at least on Monday morning -- obviously you can't speak to Monday night or Tuesday morning -- as far as Monday
TSG Reporting - Worldwide 877-702-9580

ROSEN

morning when they closed, Barclays would not have to have coughed up a significant amount of additional margin to be held at OCC.

I also learned though one of the things that we wanted to find out about, as I say, there are two dimensions to the risk that you assume when you do this. One dimension to the risk is the liability you assume as of the pre-existing mark to market by the clearing corporation and the other is the risk that you assume with respect to positions that are in there, particularly if they are positions of someone who is not creditworthy and may not be good for the payment.

And so I asked the question whether or not there looked to be positions that could entail that kind of risk and was told yes and one position in particular that was identified was a position of an affiliate, I don't remember which affiliate of Lehman that was, a very substantial position in what was called a VIX future contract that the OCC cleared that was regarded as being so large that it would have taken a very significant amount of time to
TSG Reporting - Worldwide 877-702-9580

ROSEN

liquidate it and because it was on market volatility at that point in time, it was a -- it was basically opposite the most volatile market reference and there was significant concern, for example, that it may take many million, tens of millions of dollars before that position could be liquidated.

There was separately some effort that I saw in an e-mail to provide better information about sort of what the collateral was, what the positions were. But those positions were not made available in a way that would have enabled Barclays to fully sort of model and understand the respective risks.

So they were not ultimately aware how much risk they were assuming by assuming financial responsibility for those. But it did appear that at least at the moment that the transaction was concluded, there wouldn't have been a shortfall that they would necessarily have to make up.

But it was equally true that the hundreds of millions or billions that were going in on Monday morning could have gone out on
TSG Reporting - Worldwide 877-702-9580

Page 178	Page 179
<p>1 ROSEN</p> <p>2 Tuesday morning because that was the volatility</p> <p>3 from just one mark to another. So there was</p> <p>4 obviously a substantial amount of risk in a</p> <p>5 market with very substantial volatility.</p> <p>6 So we tried to find out what we could,</p> <p>7 but it was a very mixed picture with a potential</p> <p>8 significant downside.</p> <p>9 Q. And the risk, as you understood it,</p> <p>10 was concentrated in what would happen after</p> <p>11 closing as opposed to inherent in any of the</p> <p>12 positions as of closing?</p> <p>13 A. It was that -- yes, let me put it</p> <p>14 differently, I would say that the amount of</p> <p>15 immediate payment obligations seemed to be</p> <p>16 known, unless the market or the facts changed in</p> <p>17 a way between the time we got that e-mail and</p> <p>18 what happened when it opened. It could</p> <p>19 conceivably have been some event in an early</p> <p>20 open in Asia that caused the markets to tank so</p> <p>21 significantly that OCC would have said, sorry,</p> <p>22 we need another mark. But it didn't -- there</p> <p>23 wasn't -- there wasn't a clear obligation to pay</p> <p>24 out money on Monday morning to the OCC.</p> <p>25 Q. Did Barclays do anything to protect</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 itself against the uncreditworthy affiliate and</p> <p>3 its VIX futures position?</p> <p>4 A. I think it just decided to take the</p> <p>5 risk of that with the balance of the</p> <p>6 arrangements. There was nothing it could have</p> <p>7 done in terms of Monday. The markets weren't</p> <p>8 open to close out the positions and the reason</p> <p>9 there was a significant risk was because the</p> <p>10 position couldn't have been closed out that</p> <p>11 quickly because it was apparently so large in</p> <p>12 relation to the liquidity of the market for</p> <p>13 contract.</p> <p>14 MR. MAGUIRE: We will mark as Exhibit</p> <p>15 627 a document Bates stamped CGSH 00034491</p> <p>16 through 92.</p> <p>17 (Exhibit 627, document Bates stamped</p> <p>18 CGSH 0034491 through 92 marked for</p> <p>19 identification, as of this date.)</p> <p>20 Q. Is this an e-mail you received from</p> <p>21 Bill Navin on the Sunday?</p> <p>22 A. Yes, yes, it is. It was on Sunday</p> <p>23 morning.</p> <p>24 Q. And he provides in this the</p> <p>25 information concerning the collects, that is the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 180	Page 181
<p>1 ROSEN</p> <p>2 amount that the OCC would pay to the clearing</p> <p>3 member, in this case to Lehman or its successor,</p> <p>4 Barclays, on Monday morning, right?</p> <p>5 A. The witness is nodding, the deponent</p> <p>6 is nodding. Yes.</p> <p>7 Q. And you understand in each case, the</p> <p>8 collect was a positive, meaning that payment</p> <p>9 from the OCC to Lehman or, following closing, to</p> <p>10 Barclays?</p> <p>11 A. Well, let me just say that I forwarded</p> <p>12 this on to Barclays to interpret, but my lay</p> <p>13 reading of this would be that these were net</p> <p>14 collects to the clearing member.</p> <p>15 Q. So you understood this at the time you</p> <p>16 received it?</p> <p>17 A. I understood it the way I described to</p> <p>18 you, yes.</p> <p>19 Q. And you understood the payments to</p> <p>20 Barclays would be in the hundreds of millions of</p> <p>21 dollars?</p> <p>22 A. Yes.</p> <p>23 MR. MAGUIRE: We will mark as Exhibit</p> <p>24 628 a document Bates stamped OCC 0036408</p> <p>25 through 409.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 (Exhibit 628, document Bates stamped</p> <p>3 OCC36408 through 409 marked for</p> <p>4 identification, as of this date.)</p> <p>5 Q. Is this an e-mail you received from</p> <p>6 Jim McDaniel on the previous day, Saturday,</p> <p>7 September 20?</p> <p>8 A. Yes.</p> <p>9 Q. You will see the first question that</p> <p>10 Jim McDaniel raises is how much of the billion</p> <p>11 dollars in cash will be transferred to Barclays</p> <p>12 at the closing. Do you know what happened to</p> <p>13 that?</p> <p>14 A. I believe it was transferred.</p> <p>15 Q. The entire 1 billion?</p> <p>16 A. Yeah, it would have been the deal that</p> <p>17 all of that margin was transferred.</p> <p>18 Q. The second question he asks is how</p> <p>19 would Barclays replace the 252 million in</p> <p>20 letters of credit. Do you know what happened</p> <p>21 about that?</p> <p>22 A. I'm not sure, but I think they may</p> <p>23 have called down those letters of credit because</p> <p>24 they were going to lapse and they wanted to make</p> <p>25 sure they had enough -- I'm not certain -- I</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

ROSEN

know that they did call down some. I'm not sure whether it is these particular letters of credit.

Q. Do you know what happened with respect to the 927 million in government securities at JPM?

A. I don't, I'm not certain, but they may have been part of a body of securities that are in dispute as to how they are going to be allocated that we -- I think the documents make pretty clear were supposed to be transferred to Barclays.

Q. Mr. McDaniel ends the e-mail talking about excess margin and he talks about how preliminary numbers actually showed a 5.1 million margin deficit, do you see that? Did you get any update on the margin situation?

A. I didn't, but I was under the impression at this time that -- and I can't remember the timing, that Barclays was going to do what it could to focus on this. I wanted to get the process started, but I was certainly not doing the credit analysis and deciding what was and wasn't acceptable to Barclays.

TSG Reporting - Worldwide 877-702-9580

ROSEN

Q. So you understood somebody at Barclays was following up and doing the credit analysis?

A. Doing what they could. I believe they were limited in their ability to do a fully satisfactory credit analysis because they didn't have in a form that was electronic that they could have manipulated the transaction data that would have enabled them to evaluate the risk.

So I think to a certain extent, they were assuming a significant risk in going forward because they really didn't know themselves what the likely statistical outcomes were for the portfolio.

Q. Did Barclays obtain a statement from the OCC on Lehman's accounts?

A. I believe that I saw an e-mail that indicated that OCC had provided some data on collateral and positions to Barclays personnel. I did not see the data and I don't know firsthand that it was received or what it was, but I believe so.

Q. Did anyone tell you what the statement showed in terms of the excess margin, the amount of excess margin at the OCC?

TSG Reporting - Worldwide 877-702-9580

ROSEN

WITNESS' ATTORNEY: Objection to the form. Time frame.

Q. Any time before the closing?

WITNESS' ATTORNEY: What's the date of the statement?

Q. The statement meaning statement of Lehman's positions as of the close of business on Friday?

A. I don't know what those positions were and I never saw that statement.

Q. Nobody told you what the amount of the excess margin was?

A. No, not -- I did not have information other than -- I don't recall having information other than the information transmitted by e-mail that I was copied on. If it came through my e-mail box, I may have just not have focused on it.

MR. MAGUIRE: We will mark as Exhibit 629 a document Bates stamped OCC 0036472 through 36473.

(Exhibit 629, document Bates stamped OCC 0036472 through 36473 marked for identification, as of this date.)

TSG Reporting - Worldwide 877-702-9580

ROSEN

Q. You sent this e-mail to Mr. McDaniel on Sunday, September 21?

A. Yes.

Q. He had raised a question with you in his prior e-mail to which you were responding. Do you see that?

A. Um-hm, yes, I do.

Q. And he is referring to the letter draft raising a specific issue about assumed liabilities. Do you see that?

A. Yes.

Q. And he notes that the current draft would appear to say that Barclays is not assuming liabilities represented by the short option positions in the accounts of Lehman at OCC. Did you have any discussion with him about that?

A. He responds at the top of the page.

Q. Did you have any verbal discussion with him about that?

A. No, just what I communicated to him and I assume that he accepted my explanation. Which is -- sorry.

Q. Did you at the time agree with his

TSG Reporting - Worldwide 877-702-9580

ROSEN

observation that the draft --

A. I didn't analyze it because I didn't think that it was relevant. If Barclays signed on to the asset transfer agreement and had separately reached some other agreement about was going to happen with respect to assets in the account that would not have limited Barclays' obligations having stepped into the transferred assumption agreement.

So I didn't regard the clarification letter as a limiting Barclays' obligation to OCC, whatever the net result of the entitlements and obligations between Lehman and Barclays.

Q. You are getting a little ahead of me. Let me ask you first, he is asking you about the intention. Do you see that, the intention of the clarification letter?

A. Yes.

Q. So my first question is, was it the intention in the clarification letter to say that Barclays was not assuming liabilities represented by short option positions?

A. I didn't evaluate that because I did not think it was relevant to DTCC and so my
TSG Reporting - Worldwide 877-702-9580

ROSEN

A. I think I need the APA as well.

Q. That's Exhibit 1.

WITNESS' ATTORNEY: Do you know which draft of the clarification letter is being referred to in Daniel's e-mail of September 20, 2008, a.m.

MR. MAGUIRE: I don't.

A. I would have to -- it would take me some time to focus on this, but I don't think this provision is focused on options positions. But I'm not that familiar with this portion of the agreement. It will take me some time and I'm concerned that evaluating whether his concern is justified would require me to interpret these provisions.

Q. Yes, my question is directed not so much to interpretation of provisions, more to your understanding of what the intention of the parties was. Did you have an understanding of what the intent of the parties was?

MR. HUME: I am going to object. That is a very subtle distinction. Why don't you ask whether there was a discussion about those provisions with the other side.

TSG Reporting - Worldwide 877-702-9580

ROSEN

responsibility -- I am sorry, to OCC, and my response was basically to say that the TAA speaks for itself on what our liabilities are to the OCC.

Q. I think I understand your answer and I don't want to follow up on any evaluation that you did or did not do. I am really asking about the intention, not the evaluation of any contractual language.

Was the intention of the parties as you understood it that Barclays was not assuming liabilities represented by short option positions in the accounts of Lehman at the OCC?

A. As between Barclays and Lehman, I would have to refresh my recollection of the definition of excluded liabilities to answer that question and it probably would have to call for me to interpret it.

Q. Why don't we give you the final clarification letter and see, it is Exhibit 25, which should be in front of you.

WITNESS' ATTORNEY: I don't think you ever showed him 25.

Q. Here you are, sir.

TSG Reporting - Worldwide 877-702-9580

ROSEN

That's a factual question.

MR. MAGUIRE: The factual question I have asked is with respect to Jim McDaniel's e-mail where he refers to the intention.

Q. And the question is at the time, did you agree with him?

MR. HUME: He has already answered that.

A. I did not agree with him because I did not think it mattered what was in the agreement vis-a-vis any concerns he might have -- I should say in the APA vis-a-vis any concerns that he might have regarding the scope of the responsibility that Barclays was undertaking to OCC.

Q. That's where I said you were moving ahead of me. I wanted to understand the precursor to that. He says --

A. I know, but I have never -- I didn't analyze it at the time or form a view. I formed a view that the subject matter was something that we didn't have to go into.

So whether or not he was right, I could probably form a view, but it would take me
TSG Reporting - Worldwide 877-702-9580

Page 190	Page 191
<p>1 ROSEN</p> <p>2 time that I haven't spent evaluating the concern</p> <p>3 that he is raising here and the various</p> <p>4 interconnected provisions of the agreement.</p> <p>5 Q. You did not --</p> <p>6 A. I did not address this. I basically</p> <p>7 said it doesn't seem to be relevant, what the</p> <p>8 agreement provides in terms of our obligations</p> <p>9 to OCC.</p> <p>10 Q. Now, he offered a proposed</p> <p>11 clarification. Do you see he offers some</p> <p>12 language here?</p> <p>13 A. He did.</p> <p>14 Q. What did you do with that?</p> <p>15 A. I don't recall having done anything</p> <p>16 with it.</p> <p>17 Q. Why not?</p> <p>18 A. Because I didn't believe that the</p> <p>19 provisions in the asset purchase agreement</p> <p>20 affected the undertakings that we were making to</p> <p>21 OCC.</p> <p>22 Q. You said in your note to him, "What we</p> <p>23 agree with Lehman regarding assumed liabilities</p> <p>24 and what we agree with OCC are two different</p> <p>25 things with potentially different economic</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 consequences."</p> <p>3 A. Right.</p> <p>4 Q. Can you explain what you meant by</p> <p>5 that?</p> <p>6 A. I can. If the position of a customer</p> <p>7 was in an account that Barclays had assumed and</p> <p>8 executed the TAA and was carrying at the</p> <p>9 clearing house, they had economic liability to</p> <p>10 the clearing house.</p> <p>11 If it were the case that as part of</p> <p>12 the deal, the liability that Barclays was</p> <p>13 assuming to the clearing corporation was a</p> <p>14 liability that, in fact, Lehman remained</p> <p>15 responsible for, then it was between Barclays</p> <p>16 and Lehman for Barclays to be made whole for</p> <p>17 whatever its obligation under the TAA was.</p> <p>18 So for that reason, I didn't think it</p> <p>19 was relevant. So it performed an obligation of</p> <p>20 a liability that it wasn't assuming, it could</p> <p>21 have had a claim over and against Lehman. But</p> <p>22 it couldn't have used that claim against Lehman</p> <p>23 that it wasn't assuming that liability for</p> <p>24 refusing to pay OCC what it owed OCC.</p> <p>25 Q. So are you saying that the transfer</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 192	Page 193
<p>1 ROSEN</p> <p>2 and assumption agreement set forth Barclays'</p> <p>3 obligations to the OCC, but did not in any way</p> <p>4 affect Barclays' rights under the clarification</p> <p>5 letter?</p> <p>6 WITNESS' ATTORNEY: Object to the</p> <p>7 form.</p> <p>8 A. I wouldn't say that they were utterly</p> <p>9 unrelated, but I would have said that the</p> <p>10 liabilities that it did or didn't assume under</p> <p>11 the clarification -- under the deal documents as</p> <p>12 reflected in the various agreements overrode the</p> <p>13 contractual obligation that it was separately</p> <p>14 making to OCC.</p> <p>15 OCC wanted to know that Barclays was</p> <p>16 going to be responsible for every liability that</p> <p>17 arose in those accounts and that was the risk</p> <p>18 and liability that Barclays was assuming, even</p> <p>19 if that meant they were not liabilities that</p> <p>20 Barclays was contemplating acquiring from or</p> <p>21 assuming from Lehman as part of the deal.</p> <p>22 Q. Did you have any discussions with</p> <p>23 Mr. McDaniel about that?</p> <p>24 A. Just -- my recollection is that -- I</p> <p>25 don't recall him coming back to me. There may</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 be e-mail traffic that you could refresh my</p> <p>3 recollection, but I think this was the last of</p> <p>4 the discussion of this issue, but I could be</p> <p>5 forgetting something.</p> <p>6 MR. MAGUIRE: We will mark as Exhibit</p> <p>7 630 a document Bates stamped OCC 0036482</p> <p>8 through 483.</p> <p>9 (Exhibit 630, document Bates stamped</p> <p>10 OCC 0036482 through 483 marked for</p> <p>11 identification, as of this date.)</p> <p>12 Q. You sent this e-mail to Mr. McDaniel</p> <p>13 on Sunday morning?</p> <p>14 WITNESS' ATTORNEY: No.</p> <p>15 A. It looks will like I sent it to him</p> <p>16 sometime in the afternoon on Sunday.</p> <p>17 Q. 3:31 p.m.?</p> <p>18 A. Yes.</p> <p>19 Q. And you were responding to his e-mail</p> <p>20 of just about half an hour earlier? And he is</p> <p>21 communicating, the purpose of his e-mail is to</p> <p>22 communicate OCC's position to you?</p> <p>23 A. Yes.</p> <p>24 Q. And he explains that they need the</p> <p>25 transaction, the transfer and assumption</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

ROSEN

agreement signed, right, and he says over towards the end of his e-mail on the next page in the paragraph numbered 3, "If the transaction does not close tonight, OCC would need to immediately liquidate and close out the Lehman accounts and is preparing to do so."

Do you see that?

A. I do see that.

Q. You got back to him in your response and you say, "Very sorry to keep you hanging."

Can you tell me why did Barclays keep the OCC hanging on the Sunday afternoon?

A. Because we didn't think that this was the most difficult issue to solve and we had much bigger fish to fry and so I was not able to turn my attention to this, although what I did do is forward it on, my recollection, is to a number of people, including the president of SIPC because I thought other people would have more leverage with OCC to get them to calm down and wait because it was looking less like we were going to be able to sign up the entire deal by that night.

So I thought it would probably be more
TSG Reporting - Worldwide 877-702-9580

ROSEN

effective for me to spend my time dealing with the fires we were feeling with and let somebody else calm them down.

Q. When did the Barclays' representatives, the businessmen make the decision to authorize the TAA, transfer and assumption agreement, to the execution of that agreement?

A. I would have to look and see -- I would have to refresh my recollection of the e-mails transmitting the drafts to remember exactly when that was. But I mean, I think it might have been quite late when I asked Jonathan Hughes, once we had reached agreement on the language, whether or not they had sign off from the business people.

Q. And when you say quite late, do you mean on the near side of midnight or far side of midnight on Sunday?

A. I'm not sure, but it could have been on the far side of midnight. I may be misremembering, but my recollection is that the handling of the documentation of the sort of the clearing house agreements followed the sort of
TSG Reporting - Worldwide 877-702-9580

ROSEN

the dealing with the various issues that needed to be solved, particularly with the DTCC.

I was not that concerned because I think subject to sort of the due diligence and whatever, we did not have the same problems in the OCC arrangement that we had with the DTC arrangement. So I was relatively saying that we would get there.

Q. Who was the decision maker at Barclays who gave the sign-off authority if you know?

A. I don't know who Jonathan Hughes corresponded with.

MR. MAGUIRE: Why don't we take a break and I may actually be done.

(Recess)

Q. Sir, you have talked some today about the margin Lehman maintained at the OCC. Did you consider that to be an asset that was related to Lehman's exchange-traded derivatives?

A. Yes.

Q. What about the margin at other derivatives exchanges? Did you consider the margin that Lehman maintained at other derivatives exchanges to be an asset that was

TSG Reporting - Worldwide 877-702-9580

ROSEN

related to its exchange-traded derivatives?

A. If it was part of the FCM business that they were acquiring or the equity brokering dealing, trading business, yes.

Q. When you say FCM business, you are referring to futures commission merchant?

A. Yes, or the options being an outgrowth of the equity trading and brokerage business.

Q. Now, you mentioned a number of meetings that you had with various of your partners to obtain recollection and to prepare yourself for a number of things; one was your declaration and another was for this deposition. Did you also have meetings with your partners in connection with Jonathan Hughes' preparation for his deposition?

A. I'm trying to remember. I'm not sure I was involved in Jonathan Hughes' preparation.

Q. Did you not meet with Jonathan Hughes in connection with his deposition?

MR. HUME: I am going to object to the question to the extent there may be privileged meetings that Mr. Hughes and Mr. Rosen had that may also have somehow

TSG Reporting - Worldwide 877-702-9580

ROSEN

informed the deposition, it may be hard to parse that.

Q. I am asking you about whether you met with him where the purpose of the meeting was to help him prepare and get recollections from Cleary partners so he could testify as a representative of Barclays.

A. I don't recall participating in the meeting.

Q. In any of the meetings that you had with your partners in connection with preparing your declaration, or in connection with preparing for this deposition, in searching people's recollections, did any of your partners suggest that anyone on the Lehman side had ever indicated that margin was not included in the deal?

A. No, I don't recall any such statement.

Q. You have, I think, the asset purchase agreement in front of you as Exhibit 1. If you could turn to section 1.1, to the definition of excluded assets on page 2 and the one I would like to ask you about is subparagraph N. It is at the top of page 4.

TSG Reporting - Worldwide 877-702-9580

ROSEN

Did any of your partners invite you to address that section of the APA?

WITNESS' ATTORNEY: That is a yes or no question.

A. No.

Q. Did you have any discussion with any of your partners concerning whether margin was an excluded asset under the APA?

WITNESS' ATTORNEY: I am going to object on privilege grounds. If you want to ask him for his understanding or discussions with Lehman, that's fine, but his declaration says what it says and --

MR. MAGUIRE: Are you directing him not to answer?

WITNESS' ATTORNEY: Phrased that way, yes.

Q. Let me ask you, sir, did any of your partners describe to you any discussions that they had had with anyone at Lehman concerning the excluded asset in the APA?

A. I don't think in our conversations we discussed the definition of excluded assets.

Q. Did you have any -- did anyone discuss
TSG Reporting - Worldwide 877-702-9580

ROSEN

any conversation that they had had with anyone at Lehman on that subject?

A. That was not the subject of the discussions between us.

Q. Let me --

A. But it doesn't surprise me that we didn't discuss that because derivatives contracts in that context would have been regarded as relating to the OTC derivatives contracts.

Q. Can you explain what you mean by that answer?

A. I believe that this reference is intended to be a reference to OTC derivatives contracts.

Q. What's the basis for that belief?

A. Because it would have been fundamentally inconsistent with the agreement for it to have any other meaning because the derivatives business that was OTC was not part of the deal and the derivatives business that was the listed derivatives and the assets associated with it were.

So I think that the natural reading

TSG Reporting - Worldwide 877-702-9580

ROSEN

that provision is that it was intended to refer to the derivatives business that was not coming over, the derivatives contracts rather than not coming over.

Q. When were OTC derivatives excluded?

A. I believe they were excluded as part of the original deal as reflected in the APA.

Q. Are you referring again to this provision N?

WITNESS' ATTORNEY: I am going to instruct him not to answer.

MR. HUME: You are asking him to interpret the contract.

WITNESS' ATTORNEY: You asked him about business understanding or business deal, he has answered that, and now you are asking him to prove it by asking him where in the contract.

Q. When did you learn that the OTC derivatives were not part of the deal?

A. I don't remember when I first learned that.

Q. How did you learn that?

A. I don't remember precisely how I first
TSG Reporting - Worldwide 877-702-9580

Page 202	Page 203
<p>1 ROSEN</p> <p>2 learned it.</p> <p>3 Q. Do you know from whom you learned</p> <p>4 that?</p> <p>5 A. No. It might have been from reading</p> <p>6 the document. It may have been from Jonathan</p> <p>7 Hughes. It may have been from one of my</p> <p>8 partners.</p> <p>9 MR. MAGUIRE: Sir, I have no further</p> <p>10 questions for you at this time.</p> <p>11 MR. GAFFEY: I have just a couple. If</p> <p>12 it is OK, rather than have a break, we</p> <p>13 should be pretty quick. I am Bob Gaffey,</p> <p>14 Jones Day, special counsel to the debtor.</p> <p>15 EXAMINATION BY</p> <p>16 MR. GAFFEY:</p> <p>17 Q. Earlier today, in response to one of</p> <p>18 Mr. Maguire's questions, you spoke a bit about</p> <p>19 conversations you had with Dan Gallagher at the</p> <p>20 SEC regarding Barclays stepping into the shoes</p> <p>21 of the Fed in respect to a certain repo. Do you</p> <p>22 recall that topic generally?</p> <p>23 A. No, I don't recall having a</p> <p>24 conversation with Dan. He may have been one of</p> <p>25 the people at the SEC -- I couldn't remember</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 specifically who I had followed up with at the</p> <p>3 SEC.</p> <p>4 Q. Let me give you a more general</p> <p>5 question. Whether you remember the particular</p> <p>6 person you spoke to or people you spoke to at</p> <p>7 the moment, did you have conversations with</p> <p>8 people at the SEC about the topic of the repo?</p> <p>9 A. I had discussions with the SEC about</p> <p>10 the need for a waiver by the SEC of certain</p> <p>11 rights that it might be construed to have. That</p> <p>12 would have affected the ability of Barclays, if</p> <p>13 the transaction hadn't closed, to exercise</p> <p>14 contractual rights embodied in the documentation</p> <p>15 of the repo that they were contemplating</p> <p>16 entering into with Lehman, and in the</p> <p>17 eventuality that the deal didn't close, I didn't</p> <p>18 want Barclays to be in the position where it</p> <p>19 wasn't going to be able to exercise all of its</p> <p>20 rights under the repo agreement.</p> <p>21 Q. The repo that you are talking about,</p> <p>22 was that what has been referred to, you might</p> <p>23 have heard the term "replacement transaction,"</p> <p>24 where Barclays stepped into the shoes of the</p> <p>25 Fed?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 204	Page 205
<p>1 ROSEN</p> <p>2 A. This is the transaction where the Fed</p> <p>3 unwound its repo, repurchase transaction with</p> <p>4 Lehman, and Barclays entered into the repo with</p> <p>5 Lehman on purportedly the same assets.</p> <p>6 Q. What assurances were needed from the</p> <p>7 SEC with regard to Barclays' rights under that</p> <p>8 repo?</p> <p>9 A. It was, because of the possibility</p> <p>10 that LBI would have become -- I'm not a SIPC</p> <p>11 expert, but I can tell you that my understanding</p> <p>12 was that in the event of a SIPC liquidation of</p> <p>13 the broker/dealer, that if the broker/dealer had</p> <p>14 entered into a repurchase transaction, that</p> <p>15 there was some risk -- not saying that it was my</p> <p>16 understanding that this outcome was clear, but</p> <p>17 there was some potential risk that the ability</p> <p>18 to exercise rights of termination, liquidation,</p> <p>19 set-off, whatever it is, might have been</p> <p>20 something that the SEC would have had an ability</p> <p>21 under applicable provisions to have sought a</p> <p>22 stay on and we wanted the SEC to agree that in</p> <p>23 consideration for Barclays doing this, which it</p> <p>24 would probably not otherwise have undertaken to</p> <p>25 do in the face of an insolvent counterparty, in</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 the event that the deal was not going to be</p> <p>3 consummated.</p> <p>4 Q. And when you say applicable</p> <p>5 provisions, applicable provisions of what, of</p> <p>6 the Bankruptcy Code?</p> <p>7 A. I think there are maybe 34 SIPC</p> <p>8 provisions. As I said, I'm not an expert.</p> <p>9 Q. Do you recall, as we talk about this,</p> <p>10 do you recall who at the SEC you communicated</p> <p>11 with about this topic?</p> <p>12 A. That's what I -- I don't remember</p> <p>13 who -- I'm sure it is in the -- I'm sure it is</p> <p>14 in the e-mails. Well, I suppose -- no, it would</p> <p>15 have to be in the e-mails because something came</p> <p>16 back from them saying that they would agree to</p> <p>17 waive.</p> <p>18 Q. And the nature of the rights that you</p> <p>19 were talking about, again as a general matter --</p> <p>20 I take your point you're not an expert in the</p> <p>21 area -- but what type of rights were you asking</p> <p>22 for assurances about in terms of Barclays'</p> <p>23 exercising its rights under the repo?</p> <p>24 A. I think they are rights to terminate</p> <p>25 the transactions; for example, in the event of a</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

ROSEN

default or insolvency set-off claims against collateral. It would be whatever rights are in the relevant master repurchase documentation.

Q. Did you review the relevant master repurchase documentation when you had these discussions?

A. I did not.

Q. Who did?

A. I did not.

Let me just say something, I received copies of them. I didn't actually open the e-mails with those until recently. But in terms of the risk to Barclays, when the Fed asked them to do this, one of my colleagues, Sandra Rocks provided advice to Barclays.

Q. And I am sorry, Sandra --

A. Sandra Rocks.

Q. What is Sandra Rocks' area of specialty?

A. Creditors' rights.

Q. And did Sandra Rocks propose some language, either directly or through you, propose particular language --

A. Yeah, I drafted the language and I
TSG Reporting - Worldwide 877-702-9580

ROSEN

provided it to the SEC and also I believe to SIPC.

Q. And the rights that were at the center of this discussion had to do with Barclays, as a general matter, Barclays' rights to recover the amounts that it advanced under the repo?

A. I think it would have been whatever the contractual rights under the terms of the agreement were.

Q. Did you or anyone on the Barclays' side of the table have any discussions with anyone on the Lehman side of the table or the business people or lawyers about this issue?

A. About the reservation of rights?

Q. Yeah, about, this for lack -- it is my term, not yours -- but about this contingency plan about what would happen if the broker/dealer were liquidated?

A. I don't recall who all the participants were on the phone. It may very well have been Lehman and Fed representatives and Barclays' representatives, but I can't -- I don't recall for sure.

Q. When you say you don't recall, is it
TSG Reporting - Worldwide 877-702-9580

ROSEN

because you have a vague recollection someone were there and you're not sure, or because there were a lot of phone calls and you can't tell one way or the other?

A. Both.

Q. Were you part of any discussions with Lehman or its representatives at Weil Gotshal about what Barclays' rights would be in the event of the termination of the repo?

A. No. We would have assumed that they -- that the documents spoke for itself. They would know from the standard form documentation.

Q. Are you aware of any discussions where, with Lehman or its representatives at Weil Gotshal, about what, if anything, the documents said that addressed that possibility of a termination of the repo?

A. No, the agreement I think spoke for itself and they executed it and I don't know who was involved in the process of approving and executing the repo.

Q. So we have a clear record, the document you are talking about is the master
TSG Reporting - Worldwide 877-702-9580

ROSEN

repurchase agreement or the transaction documents relating to the sale transaction or both?

A. Well, I believe your question was directed to the master repurchase agreement.

Q. Did, at any point, were you involved in any discussions or to your knowledge was anybody at Cleary -- withdrawn.

To your knowledge, was anybody on the Barclays' side of the table, Barclays or its representatives involved in discussion with Lehman or its representatives about provisions in the clarification letter that need -- that addressed the issue of the termination of the repo?

A. I'm not sure, am I the designated spokesperson -- what I spoke to you about, what I responded to on the repo was something I responded to because I was actually directly involved.

Q. I should have said this up front, I am sorry --

A. I'm not aware --

Q. We have collapsed your deposition into
TSG Reporting - Worldwide 877-702-9580

Page 210	Page 211
<p>1 ROSEN</p> <p>2 both 30(b)(6) and your individual deposition.</p> <p>3 My questions go to your personal knowledge. I</p> <p>4 have sort of reversed the rules a little bit.</p> <p>5 A. I am sorry, could you repeat the</p> <p>6 question.</p> <p>7 Q. Do you have any knowledge of whether</p> <p>8 anyone on the Barclays' side of the table,</p> <p>9 Barclays or its representatives, spoke to anyone</p> <p>10 on the Lehman side of the table, Lehman or its</p> <p>11 representatives, about provisions that needed to</p> <p>12 be included in the clarification letter</p> <p>13 regarding the termination of the repo?</p> <p>14 MR. HUME: Object to the form.</p> <p>15 A. I am sorry?</p> <p>16 MR. HUME: I object to the form.</p> <p>17 Q. I think you can answer.</p> <p>18 A. I believe that there may have been</p> <p>19 conversations between the lawyers, maybe Alan</p> <p>20 Kaplan at Barclays, but I don't have personal</p> <p>21 knowledge because I was not involved in the</p> <p>22 events leading up to the notice and the</p> <p>23 clarification that was made in the clarification</p> <p>24 letter.</p> <p>25 But I assume that -- it is obvious</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 that since the provisions were ultimately</p> <p>3 included in the clarification letter, that it</p> <p>4 was conveyed in the form of the amendments to</p> <p>5 the clarification letter that reflected those</p> <p>6 provisions.</p> <p>7 Q. OK. I would like to show you -- let's</p> <p>8 mark this as our next exhibit.</p> <p>9 (Exhibit 631, document Bates stamped</p> <p>10 BCI-EX(S) 201894 through 95 marked for</p> <p>11 identification, as of this date.)</p> <p>12 Q. The document I have put before you</p> <p>13 Mr. Rosen marked as Exhibit 631 bears Bates</p> <p>14 number BCI-EX(S) 00201894 through 895.</p> <p>15 Have you seen the document before?</p> <p>16 A. Again, not parsing every word, but it</p> <p>17 looks like an e-mail that I sent.</p> <p>18 Q. And you'll see it is an e-mail from</p> <p>19 you to Josephine Wang?</p> <p>20 A. Yes.</p> <p>21 Q. I can't --</p> <p>22 A. This is what I was referring to --</p> <p>23 Q. It is?</p> <p>24 A. -- earlier in terms of the sort of the</p> <p>25 clarification of the language included in the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 212	Page 213
<p>1 ROSEN</p> <p>2 order, and then we asked SIPC and, I guess it</p> <p>3 was Mike Macchiaroli now that I see this, to</p> <p>4 confirm that they wouldn't seek such a stay.</p> <p>5 Q. I can't tell from the e-mail address</p> <p>6 with whom or what is Josephine Wang affiliated.</p> <p>7 A. You can't tell that. I think she is</p> <p>8 in the legal department at SIPC.</p> <p>9 Q. And you say in this e-mail to</p> <p>10 Josephine Wang and Steven Sharbeck, Mike</p> <p>11 Macchiaroli, "Below is the language we believe</p> <p>12 to be necessary to ensure that the order is</p> <p>13 sufficiently broad to cover the relevant</p> <p>14 Barclays Capital transactions."</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And below that is some proposed</p> <p>18 language and below that is a note that says,</p> <p>19 "Mike, I am trying to place us in the document,</p> <p>20 are you with me?"</p> <p>21 Where did the particular language set</p> <p>22 off in italics come from, beginning, "Exercise</p> <p>23 of any rights," and ending "September 24, 2008"?</p> <p>24 A. Probably from my colleague, Sandra</p> <p>25 Rocks.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 Q. And was this particular language shown</p> <p>3 to or discussed with, to your knowledge, anybody</p> <p>4 on the Lehman side of the table, including its</p> <p>5 business people or representatives?</p> <p>6 A. I think that certainly they would have</p> <p>7 seen the order in the proposed sale -- the sale</p> <p>8 order.</p> <p>9 Q. Well, you are a bit ahead of me. I</p> <p>10 guess I should have asked that. The order that</p> <p>11 you refer to, is that the sale order?</p> <p>12 A. Yes.</p> <p>13 Q. Do you know if this language wound up</p> <p>14 in the sale order?</p> <p>15 A. I would have to check. I believe so,</p> <p>16 but I would have to check to confirm.</p> <p>17 Q. And in the language that you proposed</p> <p>18 in this e-mail, there is a reference to section</p> <p>19 559 of the Bankruptcy Code. Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Were you familiar with the terms of</p> <p>22 Section 559 of the Bankruptcy Code when you</p> <p>23 proposed this language to the Section and SIPC?</p> <p>24 A. No, I was the transmitter.</p> <p>25 Q. Do you know if anyone at -- on the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

ROSEN

Barclays side of the table, including its representatives, spoke to anyone on the Lehman side of the table, including its representatives about Section 559 of the Bankruptcy Code?

A. I don't have a specific recollection of that.

WITNESS' ATTORNEY: Mr. Gaffey, let me state for the record, for what it's worth, the language, the italicized language says, "The order that the stays set forth above shall not apply to," and I just am not sure whether or not that really is referring to the sale order as opposed to some other order.

MR. GAFFEY: Neither am I. That's why I asked the question.

Q. Does what your counsel has to say refresh your recollection?

MR. HUME: I think it is the SIPC order.

A. Hang on a second. You know what, I think you're right. This predated the sale order. This is Wednesday -- this is the 17th of September, so there was a stay put into place
TSG Reporting - Worldwide 877-702-9580

ROSEN

and I guess this was to seek clarification of that.

Q. This refers to the SIPC order, the SIPA order?

THE WITNESS: Is that the only order?

MR. GAFFEY: Let's go off the record for a minute.

(Recess)

MR. GAFFEY: Back on the record.

Q. Mr. Rosen, do you know one way or the other what order is being referred to? I mean from memory, do you know one way or the other what order is being referred to in the document we have marked as 631, your e-mail?

A. I believe it was in anticipation of the sale order, but I'm not 100 percent confident.

Q. And how much time -- I know it was a busy week -- but how much time did you devote to conversations with the SEC about this assurance language that's set out in Exhibit 631, this issue?

A. I really don't have a clear recollection. We sent it down to them and I had
TSG Reporting - Worldwide 877-702-9580

ROSEN

a conversation and asked them to focus on it and then come back. I think there was -- they understood what the import of it was. And then they came back and confirmed that they wouldn't -- you know, that they agreed they wouldn't exercise that right to seek a stay. But it didn't take a lot of to'ing and fro'ing on the telephone to get there. Their people are I think quite familiar with their rights.

Q. Did there come a point that it came to your attention that the repurchase agreement was, in fact, terminated?

A. Well, it came to my attention that the clarification letter provided for a collapse instead of unwinding the repurchase agreement and then separately transferring to basically collapse that into one step. And it was part of -- the collateral that had been under that agreement was part of the securities that were being sold.

Q. My question is a little different. It goes to the timing point more than anything else, but did there come a time when you learned that the prepurchase agreement had been

TSG Reporting - Worldwide 877-702-9580

ROSEN

terminated? And if so, when did you find that out?

A. Well, with a consummation of the transaction, it was terminated.

Q. Do you know when the repurchase agreement was terminated?

MR. HUME: Objection, asked and answered.

A. My recollection is that the agreement was terminated as part of the consummation of the sale transaction.

Q. That would be at the closing on the 22nd?

A. Which would be at the closing.

Q. Did it come to your attention at any point prior to the closing that Barclays issued a notice of termination to Lehman?

A. At some point, I did see e-mail traffic indicating that a notice had been sent in error and then my recollection is that there was an effort to document that in the clarification letter.

Q. When did the fact of the notice come to your attention?

TSG Reporting - Worldwide 877-702-9580

ROSEN

A. I honestly don't recall.

Q. Was it after the sale hearing?

A. I honestly don't recall when I became aware of it to be honest with you. There is probably an e-mail somewhere about it. I don't have a date on it.

MR. GAFFEY: OK. Let's mark this document as Exhibit 632.

(Exhibit 632, document Bates stamped CGSH 163813 through 815 marked for identification, as of this date.)

Q. I have put before you, Mr. Rosen, what has been marked as Exhibit 632 document bearing Bates number CGSH 00163813 through 815. Take a look at the document, please, sufficient to tell me whether you have seen it before.

A. Yes, it looks like the e-mail correspondence to which I was a party.

Q. Does this e-mail constitute the assurance that had been requested from the SEC?

A. Yeah, I believe this is.

Q. And had you spoken with Alastaire Bambach about the topic?

A. I don't recall. It is possible that

TSG Reporting - Worldwide 877-702-9580

ROSEN

he -- that I did or that he was on the phone when I spoke to someone regarding it. I honestly don't have a clear recollection. There was so many conversations with the SEC.

Q. And you asked Alastaire in the e-mail at the top of the chain, an e-mail dated September 18, 2008 at the time of 4:01 p.m. -- I beg your pardon, the time of 3:59 p.m. Alastaire, "Is this comfort something that we may share with others who may have an interest." Do you see that?

A. Yes.

Q. Who were the others you are referring to?

A. I'm looking at that and I don't recall specifically whether this was sort of just a general, abstract question or whether I had somebody in mind. I honestly don't recall sitting here today.

Q. And did you share this comfort with others?

A. I think I probably shared it with the client certainly.

Q. Did you share it with anybody at Weil
TSG Reporting - Worldwide 877-702-9580

ROSEN

Gotshal?

A. I don't recall providing it directly to Weil Gotshal.

Q. Do you know if it was provided indirectly to Weil Gotshal?

A. I don't have a recollection about that. It may have been. I do not. It may have been that I did this because the client at Barclays wanted to forward it on and they asked me whether they could. But I just -- but honestly, this is not a keen recollection.

Q. Do you have any knowledge, direct or indirect, as to whether this comfort language was shared with Lehman or Weil Gotshal?

A. I really don't recall.

Q. You referred a few times today in various contexts to -- you can put the document aside. To various circumstances where -- and this is, again, not a quote, but you talked about jeopardy to the deal closing by Monday the 22nd, that's a prospect that you have talked about a few times today. Was there a drop-dead date for closing?

A. No, there was just a perception that

TSG Reporting - Worldwide 877-702-9580

ROSEN

if it didn't close by Monday, there could be developments in the marketplace which might have complicated or prevented the deal from getting done. I don't think it was an ultimatum.

I think people wanted to get the deal done, but I think there was a concern that letting another business cycle go by was just -- because we didn't know what was going to happen. I think this was the weekend where we had learned very late Sunday night that, you know, Morgan Stanley and Goldman Sachs had quite expeditiously become banks and people were worried and the hurry to do that was no doubt in part due to concerns.

So I wouldn't say that it was a drop dead or an ultimatum or anything like that. It was that people realized it became more complicated and there was more noise that could interfere with the transaction the more time that elapsed. So we all, I think internally at Cleary regarded it as, put it this way, if the deal wasn't ready to close on Monday, we didn't want to be the ones responsible for it not being ready to close on Monday morning, so we took it
TSG Reporting - Worldwide 877-702-9580

Page 222	Page 223
<p>1 ROSEN</p> <p>2 seriously.</p> <p>3 Q. That issue aside, the deal could have</p> <p>4 closed on Tuesday?</p> <p>5 A. Theoretically, it could have closed on</p> <p>6 Tuesday if things hadn't intervened. It was</p> <p>7 more the risks that were associated with not</p> <p>8 closing expeditiously that were the concerns.</p> <p>9 You had to remember, the markets were very</p> <p>10 volatile and there were assets whose valuation</p> <p>11 was the source of considerable uncertainty and</p> <p>12 concern.</p> <p>13 MR. GAFFEY: I don't have anything</p> <p>14 further. Thank you for your time.</p> <p>15 MR. DAKIS: The committee has no</p> <p>16 questions.</p> <p>17 THE WITNESS: Thank you.</p> <p>18 (Time Noted: 4:35 p.m.)</p> <p>19</p> <p>20</p> <p>21 _____</p> <p>22 EDWARD J. ROSEN</p> <p>23</p> <p>24 Subscribed and sworn to</p> <p>25 before me this EDWARD J. ROSEN day</p> <p>of February, 2010.</p> <p>_____</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 INDEX:</p> <p>3 WITNESS EXAM BY: PAGE:</p> <p>4 E. Rosen Mr. Maguire 6</p> <p>5 Mr. Gaffey 202</p> <p>6 EXHIBITS</p> <p>7 Exhibit No. Marked</p> <p>8 Exhibit 622 declaration of Edward J. Rosen 8</p> <p>9 Exhibit 623 document Bates stamped 120</p> <p>10 CGSH0002699 through 700</p> <p>11 Exhibit 624 document Bates stamped DTCC 122</p> <p>12 00126 through 00198</p> <p>13 Exhibit 625 document Bates stamped DTCC 152</p> <p>14 00359 through 361</p> <p>15 Exhibit 626 document Bates stamped BCI-CG 175</p> <p>16 00024097 through 99</p> <p>17 Exhibit 627 document Bates stamped CGSH 181</p> <p>18 0034491 through 92</p> <p>19 Exhibit 628 document Bates stamped 183</p> <p>20 OCC36408 through 409</p> <p>21 Exhibit 629 document Bates stamped OCC 186</p> <p>22 0036472 through 36473</p> <p>23 Exhibit 630 document Bates stamped OCC 195</p> <p>24 0036482 through 483</p> <p>25</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 224	Page 225
<p>1 ROSEN</p> <p>2 EXHIBITS</p> <p>3 Exhibit No. Marked</p> <p>4 Exhibit 631 document Bates stamped 213</p> <p>5 BCI-EX(S) 201894 through 95</p> <p>6 Exhibit 632 document Bates stamped CGSH 220</p> <p>7 163813 through 815</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 CERTIFICATE</p> <p>3 STATE OF NEW YORK)</p> <p>4)ss:</p> <p>5 COUNTY OF NEW YORK)</p> <p>6 I, MARY F. BOWMAN, a Registered</p> <p>7 Professional Reporter, Certified Realtime</p> <p>8 Reporter, and Notary Public within and for</p> <p>9 the State of New York, do hereby certify:</p> <p>10 That EDWARD J. ROSEN, the witness</p> <p>11 whose deposition is hereinbefore set forth,</p> <p>12 was duly sworn by me and that such</p> <p>13 deposition is a true record of the testimony</p> <p>14 given by such witness.</p> <p>15 I further certify that I am not</p> <p>16 related to any of the parties to this action</p> <p>17 by blood or marriage and that I am in no way</p> <p>18 interested in the outcome of this matter.</p> <p>19 In witness whereof, I have hereunto</p> <p>20 set my hand this 19th day of February, 2010.</p> <p>21</p> <p>22</p> <p>23 _____</p> <p>24 MARY F. BOWMAN, RPR, CRR</p> <p>25</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

1 ROSEN
2 * * *ERRATA SHEET* * *
3 NAME OF CASE: In Re: Lehman Brothers
4 DATE OF DEPOSITION: February 19, 2010
5 NAME OF WITNESS: EDWARD J. ROSEN
6 Reason codes:
7 1. To clarify the record.
8 2. To conform to the facts.
9 3. To correct transcription errors.
10 Page ____ Line ____ Reason ____
11 From ____ to ____
12 Page ____ Line ____ Reason ____
13 From ____ to ____
14 Page ____ Line ____ Reason ____
15 From ____ to ____
16 Page ____ Line ____ Reason ____
17 From ____ to ____
18 Page ____ Line ____ Reason ____
19 From ____ to ____
20 Page ____ Line ____ Reason ____
21 From ____ to ____
22
23
24

EDWARD J. ROSEN

TSG Reporting - Worldwide 877-702-9580

A	108:4 110:2,21	acquisition (9)	Administered (1)	200:19 203:20
abbreviated (1)	113:15,24 119:17	7:8,18 10:16 11:21	1:8	207:10 208:20
63:10	134:6 160:20 161:9	13:18 14:5,12 47:15	advanced (1)	209:2,6 216:12,16
ability (10)	161:9,14 174:12,13	146:19	207:7	216:20,25 217:7,10
71:24 72:8 92:18	186:8 191:7	act (32)	advantage (1)	agreements (5)
99:14 162:21	accountant (1)	133:19 134:3,15,22	10:10	43:19 45:14 158:6
163:11 183:5	131:25	135:8,16 136:17,20	advice (2)	192:12 195:25
203:12 204:17,20	accounting (2)	136:21,25 137:10	80:4 206:16	ahead (4)
able (12)	14:16,18	137:13,20 138:12	advise (1)	116:15 186:15 189:18
10:22 19:20 52:17	accounts (98)	139:5,9 140:11,23	79:25	213:9
55:2 66:17 95:20	17:19 18:17,19,25	143:2,6 145:3,8,18	affect (4)	al (1)
135:2 136:11,23	38:12 40:6,8,20	145:21 146:11	147:7,15 172:8 192:4	1:8
194:16,23 203:19	41:3,7 52:5 54:17	147:6,14,16,25	affidavit (1)	Alan (2)
absent (1)	60:11,11,25 61:5	157:23 158:16	22:8	12:21 210:19
136:10	68:25 75:15,18	161:7	affiliate (6)	Alastaire (3)
absolutely (1)	76:17 77:10,11,13	action (1)	19:22 59:21 60:8	218:23 219:6,10
50:24	78:3,4,8,10,21	225:16	176:20,21 179:2	allocated (1)
abstract (1)	81:11,15 82:22,22	activities (2)	affiliated (1)	182:11
219:18	82:23 83:20 85:11	15:6 116:25	212:6	allocations (1)
absurd (2)	85:12,18,21,22 86:6	activity (1)	affiliates (1)	95:17
146:22 159:21	86:21 87:4 92:25	119:17	167:18	alternative (1)
abundantly (2)	99:20 119:11	actual (4)	afternoon (3)	110:3
49:22,25	121:19,23 122:6,8	34:10 89:12 136:4	163:19 193:16 194:13	alternatives (1)
accept (15)	122:17,25 123:5	168:5	agencies (1)	60:16
130:10 133:23 135:22	124:12,19 125:14	add (5)	60:13	amendment (2)
137:2 138:6 139:16	130:12 133:24	11:15 31:3 110:14	agents (1)	55:22 123:16
140:21 141:4,15,20	137:8 138:25	137:25 160:17	137:3	amendments (1)
141:23 142:7	139:17,18 140:3,5	added (6)	agree (15)	211:4
151:20 161:7,22	140:20 141:5,15,23	37:5 70:23 88:17,20	18:4 82:20 93:19	American (2)
acceptable (3)	142:14 148:2 152:9	111:4,12	106:6,10 110:10	10:17 15:5
151:17 153:4 182:25	155:22 156:6,7,19	adding (1)	136:9 139:20	Amina (2)
accepted (2)	156:20,23 157:7,25	111:9	185:25 189:7,10	4:9 6:12
112:8 185:23	158:24 159:3,6,8,16	addition (5)	190:23,24 204:22	amount (24)
accepting (6)	159:19,20 160:2,4	32:10 138:4 173:19	205:16	11:2,5 38:22 54:2
130:11 134:6 137:8	160:13,14 173:17	174:19,22	agreed (15)	96:4 100:13 101:5
138:24 140:4	174:21 175:12,20	additional (10)	5:5,9,15 31:5 53:20	116:12,19,19 118:2
142:14	183:16 185:16	17:21 26:13,21 52:15	53:24 58:20 103:11	118:21 119:4,7
access (3)	187:14 192:17	119:13 125:5 131:9	122:11,18 138:5	135:23 175:5,6
101:12 117:22 130:22	194:7	167:16 173:22	139:6 143:23	176:3,25 178:4,14
accommodations (1)	accuracy (1)	176:4	149:19 216:6	180:2 183:24
10:12	35:19	address (8)	agreeing (3)	184:12
accomplish (2)	accurate (2)	81:25 82:3 88:3	77:22 110:7 174:8	amounts (3)
48:6 137:18	35:18 167:20	105:14 145:17	agreement (63)	119:20,22 207:7
accomplished (3)	accurately (2)	190:6 199:3 212:5	11:23 25:21 29:13	analysis (5)
33:18 48:2 102:9	47:2 57:2	addressed (11)	34:23 35:17 36:18	153:9 171:10 182:24
account (67)	acquire (3)	8:24 32:20 36:23 37:3	46:20 55:19,21	183:3,6
51:18 52:23 53:21,22	71:7 80:20 157:10	45:8,12,13 73:11	58:15 59:10 79:4	analyze (2)
54:3 58:24 59:25	acquired (18)	99:17 208:18	102:8 110:17 112:9	186:3 189:21
60:3,4,9,16 61:17	7:4 10:17 11:4,21	209:15	146:23 147:20	analyzed (1)
62:5,6,6,13,14 75:8	13:5 19:10,12,14,22	addresses (1)	151:4,24 152:2	109:18
75:25 76:5,7,7,22	20:4,6 67:25 79:22	36:22	154:9 156:4,13,19	analyzing (1)
77:2 79:8,13,14,14	158:24 159:4,5,6	addressing (1)	157:20 158:4 164:9	86:4
79:19,20 80:9,9,17	170:18	145:6	164:11 165:2,10,17	announce (1)
80:21 83:13 91:16	acquiring (14)	adequate (4)	165:18 166:4 168:5	52:17
95:19 96:4 97:13,14	7:25 47:7 67:18,20	11:9,25 17:8 140:18	171:18 172:18,19	announced (2)
97:23 98:4,7,22	71:5,12 78:10 80:17	adjunct (2)	186:5,6,10 188:13	50:13,15
99:2,15 100:20,21	83:20 100:25	108:7,12	189:11 190:4,8,19	answer (28)
101:8,20 103:17,18	157:13,16 192:20	administer (1)	192:2 194:2 195:8,9	24:5,8 26:6,10 35:17
	197:4	5:18	195:15 198:21	

42:18 44:8 49:4,5,6 57:8 58:17 84:2 85:24 86:3 118:7 126:11 134:25 135:2 161:25 171:7 171:8 187:6,17 199:16 200:13 201:12 210:17 answered (11) 42:5 47:18 80:10 97:16 108:16 145:12 160:16 169:7 189:8 201:17 217:9 answering (1) 171:12 anticipate (1) 14:11 anticipated (2) 15:13 66:22 anticipating (2) 14:4,20 anticipation (2) 149:16 215:16 anybody (7) 46:9 52:18 134:24 209:9,10 213:3 219:25 anytime (4) 43:12 58:14 59:8 154:19 APA (13) 31:8 52:5 57:14 65:9 65:23 84:12 130:7 188:2 189:13 199:3 199:9,22 201:8 apart (1) 136:3 apparently (1) 179:11 appear (5) 35:10,11 121:9 177:19 185:14 APPEARANCES (2) 3:2 4:2 appearing (1) 74:8 appears (3) 36:18 121:4 154:15 applicable (10) 94:6 102:11 105:12 105:16 106:7 107:11 110:12 204:21 205:4,5 apply (1) 214:12 appreciate (1) 55:4 appropriate (4)	34:11 46:19 73:13 112:8 approval (1) 19:20 approved (6) 95:7,13 100:3,3,23 101:15 approving (1) 208:22 Archibald (1) 57:21 Archie (6) 127:18 129:5,24 131:7 140:2 141:18 area (2) 205:21 206:19 arguably (1) 103:7 argue (2) 102:12 103:21 arms (1) 175:10 arose (3) 9:3,4 192:17 arrangement (6) 45:19 85:7 123:16 164:19 196:7,8 arrangements (12) 7:14 39:14 59:4 68:4 84:19,25 85:5 104:20 136:10 146:18 150:23 179:6 arrived (1) 105:9 articulated (2) 131:6 151:17 articulation (2) 140:13 169:13 ascertain (1) 174:17 Asia (1) 178:20 aside (8) 14:18 102:2 103:11 155:3 171:15 172:19 220:19 222:3 asked (27) 28:16 42:4 47:17 55:3 77:11,14 80:7 97:15 108:15 145:11 160:15 169:6 173:24 174:4,7 176:16 189:4 195:14 201:15 206:14 212:2 213:10 214:17 216:2 217:8 219:6	220:10 asking (32) 30:5,7 33:24 36:8 63:18 78:2 80:22,25 81:4,14 82:12,13 89:22 115:19 128:13,14 130:21 149:6 161:20 170:22 171:5 172:9 172:12,14,17 186:16 187:8 198:4 201:13,18,18 205:21 asks (1) 181:18 aspects (2) 58:25 131:21 assent (3) 99:22 106:2 109:25 assertions (1) 140:15 asset (19) 48:15 55:18,21 58:14 59:9 81:24 82:9 109:4 150:19,20,22 167:14 186:5 190:19 196:19,25 198:20 199:9,22 assets (121) 17:7 33:20 41:18 42:7 43:6,17 47:9 49:12 49:12,23 52:4,7,7 52:23 59:6 60:12 61:14,22 64:22 67:18,21,22,24 68:2 70:9 71:5,8,12,13 71:25,25 72:9 74:21 75:2,2 76:19 77:9 79:17,18 82:5,5 83:22,24 84:9 90:21 91:14 92:10 94:14 96:7,15 99:23,25 100:20,21,22 101:11,14,16,17,18 103:6,8 122:20,22 123:6,8,23,24 124:2 124:3,4,17,18,23 125:10 132:20 139:18 148:4 153:2 153:5 156:5,23,25 157:2,2,6,8,13,16 157:18,25 158:6,13 158:23 159:3,4,5,19 160:4,14,19 161:14 161:15 162:7,8,18 162:22 163:4,5,10 163:14 171:19,22 172:16,24 186:7 198:23 199:24	200:23 204:5 222:10 associated (20) 11:14 31:7 38:11 41:18,19 43:18 54:3 61:14,22 64:22 68:19 75:9 77:9 82:6 119:5 124:11 138:19 159:15 200:24 222:7 assume (20) 21:2 47:21 57:12 76:3 85:12 118:5 122:8 122:16 123:3 130:3 131:9 140:3 152:24 174:20 176:8,9,12 185:23 192:10 210:25 assumed (12) 20:8 44:12 68:24 86:22 116:18,22 152:25 153:3 185:10 190:23 191:7 208:11 assuming (21) 68:10,18 78:3,5 86:6 121:22 124:9,10,15 152:8 177:17,17 183:11 185:15 186:22 187:12 191:13,20,23 192:18,21 assumption (12) 11:24 69:5 85:11 111:25 112:2 121:19 122:6 124:14 186:10 192:2 193:25 195:8 assumptions (1) 44:24 assurance (4) 18:10 147:5 215:21 218:21 assurances (2) 204:6 205:22 attached (2) 90:9 164:18 attachments (1) 121:7 attempt (1) 47:2 attempted (1) 28:20 attention (8) 70:15 73:18 160:18 194:17 216:12,14 217:16,25 attorney (17) 165:4 166:7 170:12	171:9 174:2 184:2,5 187:23 188:4 192:6 193:14 199:4,10,17 201:11,15 214:8 attorneys (7) 3:5,12,19 4:5,12 5:6 26:15 attorney/client (2) 24:2 49:6 authority (2) 161:13 196:11 authorize (1) 195:7 authorized (1) 5:17 authorizes (1) 161:7 available (21) 54:4 61:12,15 94:15 96:15 100:15 101:18 102:23 108:9,10 109:4,4,16 109:17 110:3 138:4 150:21 152:10 153:23 167:16 177:13 Avenue (2) 3:13,20 avoid (6) 50:14 52:23 53:19 54:11 106:10 134:9 avoidance (1) 48:25 avoiding (1) 98:12 aware (34) 14:8,10,20 36:11,12 44:5 47:12 59:11 65:11 77:17 78:20 87:2,15 89:7 93:20 95:23 99:6,13,21 101:18 102:4 105:13 110:22 112:20 125:7 160:10 162:16 164:15 167:4 172:23 177:16 208:15 209:24 218:5 a.m (3) 2:6 154:10 188:7
<hr/>				
B				
<hr/>				
B (6)				
67:16 76:11 82:16 164:3,6 170:2				
back (16)				
30:3,18 43:11 49:19 74:17 111:15				

114:23 118:19 151:15 154:12 192:25 194:10 205:16 215:10 216:3,5 background (1) 168:11 balance (2) 149:17 179:5 Bambach (1) 218:24 bank (7) 52:5,12,13,14 53:11 54:17 103:17 banking (1) 15:6 Bankruptcy (5) 1:2 205:6 213:19,22 214:5 banks (4) 60:12,13 116:21 221:13 Barclays (240) 3:12 7:4,18,24 9:25 10:16 11:18 12:8,15 12:16,24 13:10,18 14:4,11,20 15:13,17 16:5 17:22,22,23 18:6,18 20:8 31:15 38:15 44:5 47:7,13 51:19 53:19,24 58:20 60:22 61:3,12 61:16,17 62:12,14 62:20 65:3 67:17 68:10 69:4 71:4,6 72:24 75:16 76:2,8 77:2,9,12 78:3,5,10 79:9,10,12,15,21 80:8,9,17,20 81:16 83:19 85:17 86:5,22 92:7,10,15,17,17 98:14,22 99:15 100:14,24 103:10 108:4 109:3,12 110:19,20,24 113:22 120:11 121:22 122:8,11 123:3,6,8,23,24 124:3,4,9,18,18 125:2,7,25 126:20 126:24 128:2,6,8,13 128:15 129:3,4,9 130:2,9,22 131:7 133:22,23 134:20 134:25 135:6 137:7 138:4,24,24 140:3,4 140:24 141:4,14 142:6 147:5,12 150:11,25 151:8,17	151:20 152:8 156:5 156:7,14,24 157:9 157:13,18,21 158:2 158:12,22,25 159:12,18 160:11 160:12 161:16 162:5,15,19,20 163:5,6,9 166:5 167:13,19 170:18 171:19,21 172:8,24 174:8,17 175:11 176:2 177:14 178:25 180:4,10,12 180:20 181:11,19 182:13,21,25 183:2 183:15,19 185:14 186:4,9,12,14,22 187:12,15 189:15 191:7,12,15,16 192:2,4,15,18,20 194:12 195:5 196:10 198:8 202:20 203:12,18 203:24 204:4,7,23 205:22 206:14,16 207:5,6,11,23 208:9 209:11,11 210:8,9 210:20 212:14 214:2 217:17 220:10 base (1) 175:6 based (5) 68:21 127:15 151:24 169:3 172:5 basically (10) 48:14 64:23 105:18 138:10 147:24 159:24 177:4 187:3 190:6 216:17 basis (6) 21:4 119:12 144:13 152:5,7 200:17 Bates (30) 118:14,16 120:22,23 149:25 150:2 173:3 173:5 179:15,17 180:24 181:2 184:21,23 193:7,9 211:9,13 218:10,15 223:9,11,13,15,17 223:19,21,23 224:4 224:6 Battery (1) 4:6 BCI (3) 60:20 62:2 82:23 BCI-CG (3) 173:3,6 223:15	BCI-EX(S) (3) 211:10,14 224:5 bearing (1) 218:14 bears (1) 211:13 becoming (4) 77:10 78:4,5 82:23 beg (1) 219:9 beginning (8) 46:24 48:2 74:20 104:18 159:14 167:5 168:7 212:22 behalf (5) 60:2,5,8 75:23 150:17 belief (2) 85:3 200:17 believe (51) 7:20 11:7,8 12:14,20 20:2,12 30:2 38:21 39:11,15 49:7 60:24 62:19 66:4 80:10 87:3 95:22,24 97:21 106:13 111:5,19 120:5,7 122:10,11 124:21 125:20 133:24 142:19,19 142:22,24 144:2 158:14 166:19 181:14 183:4,17,22 190:18 200:14 201:7 207:2 209:5 210:18 212:11 213:15 215:16 218:22 believed (2) 103:6 168:14 belong (3) 157:18 158:2 161:16 beneficial (1) 160:3 benefit (1) 145:23 Berman (1) 86:25 best (1) 49:8 bet (1) 15:5 better (6) 45:17 53:6 130:22 152:25 163:21 177:10 beyond (12) 15:9 37:12 97:8 112:16,18,20 127:17 130:4 131:12 142:7 145:5	171:11 bigger (2) 117:3 194:16 Bill (3) 6:10 175:18 179:21 billion (15) 11:8,20 12:25 54:6 98:4 103:12,14,16 106:12 120:9 173:12,16,25 181:10,15 billions (3) 117:6,11 177:24 bit (9) 10:8 18:20 29:24 51:17 56:10 113:10 202:18 210:4 213:9 blackline (2) 69:17 89:17 blacklined (2) 69:9,10 blood (1) 225:17 Boaz (2) 4:15 21:13 Bob (4) 18:11 28:13 56:14 202:13 body (1) 182:9 BOIES (1) 3:11 booked (1) 19:18 books (4) 16:5 17:5 60:10,17 bottom (10) 55:24 59:13 64:11 67:11 70:8,19,20 87:24 90:14 91:19 Bowman (4) 1:17 2:11 225:6,22 box (23) 67:12,18,22 70:10,19 72:9 90:21 91:9,10 91:14 92:7,11 158:6 162:7,18,22 163:10 171:3 172:11,11,15 172:24 184:18 boxes (9) 90:16,23 91:4 157:14 163:7 170:19 171:20,22,25 bracketed (1) 73:16 brackets (2) 48:22 73:9 break (15) 6:16 52:25 54:19	55:12 106:25 112:24,25 113:2,5 113:13 163:18,22 167:23 196:15 202:12 broad (2) 89:7 212:13 broader (1) 85:4 broker (8) 9:23 10:11 19:12,23 60:7,18 61:5 62:7 brokerage (1) 197:9 brokering (1) 197:4 brokers (4) 20:14 61:6 175:2,5 broker/dealer (3) 204:13,13 207:19 brother (1) 19:24 Brothers (5) 1:7 3:5 83:11 164:5 226:3 business (92) 7:9,10 8:8,10 10:17 10:18 11:4,21 13:5 13:11,12 14:6,12 15:12 19:10,21 20:5 20:7,10,12,15,18,23 41:5,12,13,14,17,19 42:8 44:14 47:3,5 47:11,13 49:24 52:7 55:15,18 57:2,6 58:4,8,10,13 59:8 59:23 60:7 64:21 67:21,25 71:13 78:17 79:22,23 81:24 82:6 85:13,21 86:7,22 87:5,7 99:19 100:2,24 103:9 115:11 116:22,23 139:17 162:14 171:16,18 172:20,20,22 175:21 184:8 195:17 197:3,5,6,9 200:21,22 201:3,16 201:16 207:14 213:5 221:8 businesses (3) 43:18 47:8,9 businessmen (1) 195:6 busy (1) 215:20 buy (1) 157:10
--	--	--	---	--

buying (2) 52:8 71:11	cases (1) 21:21	certify (2) 225:9,15	31:20	clearance (29) 67:12,18,22 70:10,19
C	cash (29) 48:19,22 49:13 50:7	CGSH (7) 69:18 179:15,18	circumstances (4) 53:14 70:4 102:25	72:9 90:15,21,23
C (1) 73:3	50:25 51:18,23	218:11,15 223:17	220:19	91:4,14 92:7,11
calculation (1) 11:13	52:13 53:11,20 54:7	224:6	claim (2) 191:21,22	157:14 158:6 162:7
call (34) 54:6 75:7 81:25	54:11,13,17 83:6	CGSH0002699 (2) 118:17 223:10	claims (8) 17:8 58:21 96:16	162:18,22 163:7,10
103:20 106:11	95:17 98:11,13	chain (4) 62:3 79:10 173:8	100:15 101:19	170:19 171:3,19,22
108:12 123:20	103:11,12 106:10	219:7	109:6,8 206:2	171:25 172:11,11
127:4,5,8,10,22,23	106:12,24 107:6,15	chairman (1) 133:11	clarification (50) 29:9 30:5,7 31:2	172:15,24
127:25 128:7,9,13	150:13 173:12,16	change (11) 29:13 30:25 35:20	36:17 48:23 49:16	cleared (3) 146:15 147:18 176:23
128:15,19,24 130:8	181:11	58:8,13 59:7,8	52:2 53:25 54:8	clearest (1) 49:18
132:14 134:8	categories (1) 76:20	71:15 111:6 152:19	55:22 58:22 62:17	clearing (41) 18:14 42:10,23 47:15
142:20 143:2,10,15	category (1) 85:5	152:23	63:2,4,18,20 80:12	51:3 59:7 60:13,13
143:18 149:2 152:3	caught (1) 49:9	changed (7) 32:8 36:24 45:19	80:15 83:25 84:11	61:3,4,4,5,6,7,20
158:5 171:13 182:2	caused (1) 178:20	58:19 59:11 151:21	84:13 90:7,9 93:10	68:12 78:14,16 79:5
187:18	caution (2) 103:5 141:6	178:16	112:9 114:11	104:20 119:14,21
called (7) 6:6 21:23 54:2 86:24	caveat (1) 35:2	changes (20) 26:16 29:21,23 30:2,7	137:25 158:8,11	124:7 137:21
106:18 176:22	caveating (1) 102:10	30:17,20 31:20,24	159:11 171:4	140:19 146:5
181:23	cease (27) 133:19 134:2,15,21	32:5,5 34:13 35:19	186:11,18,21	159:22,23 160:7,8
calling (1) 115:17	135:7,15 136:16,21	37:17 45:12,14,16	187:21 188:5	175:2,4,7,20 176:10
calls (22) 39:12,16 43:3 72:4	137:9,13,20 138:11	46:10 119:15	190:11 192:4,11	180:2,14 191:9,10
78:22 92:12 126:11	139:5,9 140:10	155:14	209:14 210:12,23	191:13 195:25
126:24 128:21	143:2,6 145:3,8,17	Chapter (1) 1:6	210:23 211:3,5,25	clearinghouse (10) 9:3,7 62:7,8 79:6,11
129:7,8,11,13,15,16	145:21 146:11	character (2) 8:22 51:5	215:2 216:15	119:12,14,21
129:22,25 130:14	147:6,14,16 157:23	characterization (6) 70:13 77:23 81:7	217:23	144:23
137:16 166:14	158:16	102:19 161:22	clarified (4) 45:25 48:13 59:12	clearinghouses (5) 39:12,24 40:24 41:2
169:14 208:4	ceasing (3) 136:20,25 140:23	174:3	115:7	85:7
calm (2) 194:21 195:4	center (1) 207:4	characterize (1) 97:8	clarifies (1) 65:10	clearly (3) 106:24 115:2 163:13
candid (1) 104:16	certain (27) 8:21,23 11:13 16:13	characterizing (1) 77:24	clarify (5) 31:5 46:19 65:15	Cleary (22) 2:9 4:11 31:15 32:4
candidly (1) 130:17	18:4 24:10,24 25:6	Chase (1) 173:21	85:20 226:7	37:18 44:5 54:23
capital (20) 9:24 10:2,14,19 11:3	34:18 38:22 54:2	check (2) 213:15,16	clarifying (2) 49:9 51:6	56:13,21 66:18
11:5,7,10,12,16,20	70:9 86:21 87:4	checking (1) 55:7	clarity (1) 48:25	69:16 70:23 81:9
12:2,17,25 13:6,11	91:12,16 95:8	cherry (1) 162:6	clause (3) 67:16 76:11 82:16	111:14 112:12
13:14 19:2 20:8	122:22 123:18	choose (1) 163:6	clean (1) 89:17	129:21 166:4,25
212:14	162:7,21 172:16	circulated (2) 162:13 163:24	clear (37) 33:19 45:20 46:5	169:18 198:7 209:9
cared (1) 72:21	181:25 182:8	circulating (1) 155:5	49:22,25 50:2,17,24	221:22
carried (4) 61:5,8 79:14,15	183:10 202:21	circulation (1) 155:6	51:14 52:6 54:16	Cleary's (1) 29:11
carry (1) 60:18	203:10	circumstance (1)	61:2 71:22 82:13	client (5) 117:23 122:15 134:12
carrying (6) 60:17 61:6 62:5,6	certainly (11) 15:23 44:14 50:23		93:18 104:10,15	219:24 220:9
140:20 191:8	63:3 66:20 88:18		106:21 107:5	close (19) 19:20 53:16 109:19
case (9) 1:7 61:16 102:20	113:6 155:8 182:23		108:19 111:3,24	134:21 135:6
162:17 175:8 180:3	213:6 219:24		120:14 127:7 137:7	136:11,23 138:14
180:7 191:11 226:3	CERTIFICATE (1) 225:2		139:3 140:16,24	139:13 146:8
	Certified (2) 2:12 225:7		143:5 146:18	168:21 179:8 184:8
			169:17 178:23	194:5,6 203:17
			182:12 204:16	221:2,23,25
			208:24 215:24	closed (8) 8:25 165:22 175:23
			219:4	176:2 179:10

203:13 222:4,5 closely (1) 168:5 closeout (1) 161:6 closing (31) 15:12,17 38:4 43:10 60:23 81:13,17 91:23 94:7 120:4 134:5 137:22 146:13 149:16 157:17,19 158:2 165:11,14 170:19 178:11,12 180:9 181:12 184:4 217:13,15,17 220:21,24 222:8 Code (4) 205:6 213:19,22 214:5 codes (1) 226:6 Colby (1) 18:12 collapse (2) 216:15,18 collapsed (1) 209:25 collateral (6) 144:10 173:23 177:11 183:19 206:3 216:19 colleague (4) 6:12 110:6 163:23 212:24 colleagues (2) 81:9 206:15 collect (3) 119:23 175:6 180:8 collecting (1) 21:24 collective (3) 26:20 56:19,20 collects (5) 118:25 119:10 120:3 179:25 180:14 combination (4) 10:3,8,21 12:2 combined (1) 11:7 come (14) 65:22 86:20 95:12 100:9 105:19 116:23 146:12 160:18 212:22 216:3,11,24 217:16 217:24 comes (1) 59:4	comfort (3) 219:10,21 220:14 comfortable (7) 82:17 124:9 130:21 142:12 168:19,24 169:12 coming (11) 16:25 17:6,19 40:15 43:6 85:9 105:22 119:13 192:25 201:3,5 comment (1) 138:21 comments (9) 27:4,5,10 69:18,23 70:5 164:14,20,23 commission (1) 197:7 committal (1) 17:2 committee (4) 3:19 118:8,10 222:15 common (1) 86:19 communicate (3) 46:7,22 193:22 communicated (4) 126:3 142:13 185:22 205:10 communicating (1) 193:21 communication (4) 37:11 57:10,11 112:12 communications (6) 32:19 38:8 43:5,22 120:16 141:7 comparing (1) 69:14 complete (1) 102:14 completed (1) 66:23 completing (1) 52:16 completion (1) 22:19 complicated (3) 10:8 221:4,19 compound (3) 45:3 162:10 166:8 computations (1) 11:16 compute (1) 10:14 computed (1) 10:2 conceivably (1)	178:19 concentrated (1) 178:10 concept (1) 76:16 concern (13) 52:10 94:2,13 96:10 103:4,4 105:15 135:19 177:5 188:15 190:2 221:7 222:12 concerned (9) 50:10 51:10 117:4 144:16 146:4 150:18 156:24 188:14 196:4 concerning (22) 28:23 31:2 35:24 37:11 38:2 39:8 40:4 47:14 84:24 88:2 97:13 113:15 113:21 120:3 122:21 123:23 124:17 160:12 164:9 179:25 199:8 199:21 concerns (8) 45:11 68:19 121:19 132:19 189:12,13 221:15 222:8 concession (2) 102:13,15 concise (3) 49:22 50:16 116:2 concisely (1) 51:14 concluded (1) 177:20 conclusions (1) 128:5 condition (1) 11:23 conducted (2) 119:17 154:22 conducts (2) 60:6,7 conference (3) 39:11 152:3 166:23 confident (2) 42:20 215:18 confined (1) 91:15 confirm (2) 212:4 213:16 confirmation (1) 96:9 confirmed (4) 10:7 120:9 141:21 216:5	conform (1) 226:7 confusion (1) 69:25 conjecture (1) 102:24 connection (13) 37:7 38:18 39:3 42:3 42:8 51:21 75:8 85:17 120:19 197:16,21 198:12 198:13 cons (1) 19:17 consequences (3) 19:12 134:14 191:2 conservative (1) 144:24 conservatively (1) 144:25 consider (5) 62:13 73:10 91:3 196:19,23 considerable (1) 222:11 consideration (1) 204:23 considerations (1) 123:10 considering (1) 133:19 consistent (4) 38:13 55:9 64:12,24 consolidate (1) 10:23 constantly (1) 106:19 constitute (1) 218:20 constituted (1) 40:18 constraint (1) 105:17 construct (2) 101:21 102:2 construed (2) 170:2 203:11 consult (1) 141:8 consummate (1) 132:21 consummated (1) 205:3 consummating (1) 147:22 consummation (2) 217:4,11 contacted (1)	18:12 contained (1) 24:16 contemplated (5) 59:2 68:21 92:6 94:14 136:12 contemplating (4) 68:10,14 192:20 203:15 contemporaneously... 87:22 content (2) 26:11 44:2 contents (2) 12:12 121:7 context (7) 30:9 33:9 77:18 118:23 138:9 170:11 200:9 contexts (1) 220:18 contingency (4) 108:20 113:20 114:3 207:17 continue (2) 113:6 147:25 continued (3) 128:25 138:16 169:2 continues (2) 33:21 85:10 continuing (3) 106:17 140:21 149:15 contract (7) 86:4 115:18 170:23 176:23 179:13 201:14,19 contracts (8) 7:6,17,24 119:16 200:9,11,16 201:4 contractual (6) 171:13,15 187:10 192:13 203:14 207:9 contractually (3) 157:19 158:2 161:15 contributed (1) 79:7 control (1) 32:3 convened (1) 128:4 conversation (36) 11:6 13:21,23 14:2 16:2,25 17:16,20 18:11 36:9 37:7 40:16 44:4 65:4 96:13,24 104:7 105:6,23 106:15,18 106:24 110:10
--	--	---	---	--

113:14 133:13 135:5,17 136:13 149:5 153:12 159:22 160:10 164:10 200:2 202:24 216:2 conversations (46) 9:12,13,16,19 14:9,15 16:12,16,21 17:11 17:12,14 19:8 36:25 37:22 38:7 40:25 41:8,10 42:2,23 44:2 58:5 65:12 96:2 106:17 127:16 130:19,25 131:20 144:8 148:15 149:7 149:9,12 151:11 155:10,12 158:21 168:13 199:23 202:19 203:7 210:19 215:21 219:5 convey (1) 134:12 conveyed (9) 94:10,18 115:6 130:2 130:9 133:22 142:17 169:11 211:4 coordinated (1) 12:22 copied (9) 38:9,9,24 39:2 66:4 87:13 118:22 120:5 184:17 copies (1) 206:12 copy (3) 88:5,14 89:17 copying (1) 38:20 corporation (8) 61:20 68:12 146:5 159:23,23 160:8 176:11 191:13 correct (16) 24:20,23 33:22 54:9 63:6 77:3 96:16 98:14,15,23 100:10 103:13 113:17 114:15 140:7 226:8 correctly (2) 24:7 63:17 corresponded (3) 12:20 125:20 196:13 correspondence (3) 120:6,8 218:19 coughed (1) 176:3	counsel (12) 18:22 32:7 66:16 90:7 133:9,10 154:16,19 155:8,13 202:14 214:18 counter (2) 8:5,7 counterparty (1) 204:25 COUNTY (1) 225:5 couple (7) 9:13,20 33:23 53:3 105:3,3 202:11 course (2) 105:5 140:15 court (7) 1:2 5:20 16:11 52:11 53:10 99:22 100:4 cover (6) 37:20 63:10 85:4 154:7 164:16 212:13 covered (12) 23:11 40:19 41:7 42:20 44:17 48:11 61:10 63:5 80:16 83:2 171:3 172:16 covering (2) 17:8 83:18 covers (1) 63:11 Cox (9) 57:21 127:18 129:5 129:24 130:13 131:7 140:2 141:18 142:17 create (1) 138:15 credit (24) 11:15 41:4 45:23 46:21 61:11 123:20 125:6 130:20 135:23 139:4,7 140:18 148:2 150:12,21 152:9 167:12,17 181:20 181:23 182:4,24 183:3,6 creditors (4) 3:19 118:8,10 206:21 creditworthy (3) 140:18 175:8 176:14 crossed (3) 34:2,6,9 CRR (2) 1:17 225:22 crucible (1) 123:10	curious (1) 54:23 current (1) 185:13 custodian (1) 60:12 customer (41) 17:8 41:17 43:20 47:10 52:3 54:16 59:22 60:8 64:23 74:22 75:4,15 79:11 82:21 83:9,12 85:12 85:18 86:6,21 92:25 96:16,25 99:13,19 100:9,15 109:6,8 116:24,25 117:5 137:3 139:17 157:2 159:6,8,9 171:23 175:6 191:6 customers (18) 20:14,22 40:9 45:7 75:17 101:4,4,12,19 101:22 102:17,21 109:10 170:20 171:20 172:3,7 175:9 cycle (1) 221:8 <hr/> D <hr/> D (3) 73:20 74:18,20 DAKIS (2) 3:22 222:15 Dan (6) 9:17 13:25 17:17 149:3 202:19,24 Dana (4) 21:13 22:20 56:14 104:12 Daniel's (1) 188:6 data (3) 183:8,18,20 date (17) 6:4 69:18 93:24 118:18 120:25 150:4 173:7 179:19 181:4 184:5,25 193:11 211:11 218:7,12 220:24 226:4 dated (4) 118:13 121:11 169:18 219:7 David (4) 21:11 28:14 56:15 74:18 Davis (4)	4:16 21:10 28:13 56:15 day (10) 3:4 13:17 14:5,11 174:12,22 181:6 202:14 222:22 225:20 days (1) 91:22 DC (1) 3:14 dead (1) 221:17 deal (82) 8:21,24 9:10,15 15:15 18:7 19:20 37:24 43:16 45:12 46:9 47:3,5,22 48:16 50:12,15 51:13 52:17,20 53:18 55:10,15,18,20 57:2 57:6,13,18 58:4,8 58:10,13,25 59:7,8 64:20 65:14 66:22 70:5 75:12 78:17 81:15 101:15 102:14 103:13,15 106:18 108:24 109:19 115:11 124:24 132:21 136:5 137:15 138:14,20 157:3 158:7 159:9 162:14 171:17 172:20,20 172:22 181:16 191:12 192:11,21 194:23 198:18 200:22 201:8,17,21 203:17 205:2 220:21 221:4,6,23 222:3 dealer (5) 9:23 10:11 19:13,23 60:7 dealing (9) 8:21,23 20:2 49:10 127:6 132:24 195:2 196:2 197:5 deals (2) 36:19 62:20 dealt (5) 34:21 62:16 80:11 106:20 159:10 deal's (1) 46:19 debtor (1) 202:14 Debtors (1) 1:9	decide (1) 71:18 decided (7) 49:18 122:16 151:16 153:3 162:19 163:11 179:4 deciding (1) 182:24 decision (9) 52:22 54:11 71:20 141:3,14,18 142:6 195:7 196:10 declaration (34) 6:2,21 21:3,4 22:11 22:15,17,19,24,25 23:17,24 25:2,8 26:4 55:13,16,25 58:12 59:14 73:25 74:14 88:4,9,23 89:9 113:17 114:3,5 115:10 197:14 198:13 199:14 223:8 decline (1) 161:25 deductions (1) 11:14 default (1) 206:2 deficiency (3) 96:11 99:12 100:8 deficit (4) 101:8,10 102:21 182:17 defined (1) 68:2 definition (6) 33:19 41:15 74:25 187:17 198:22 199:24 delegated (1) 132:10 deleted (4) 34:2 35:5,6 89:20 deletion (2) 51:8 89:12 deliver (1) 161:8 delivered (2) 94:15,16 department (1) 212:8 depends (4) 29:3 119:19 135:14 136:19 deponent (1) 180:5 deposit (12) 42:2,16 43:15 44:7,20
---	---	--	--	---

47:16 59:7 78:16 79:2,3,7 88:3 deposition (15) 1:12 2:8 5:16 22:12 22:15 197:14,17,21 198:2,14 209:25 210:2 225:11,13 226:4 depositories (1) 90:25 depository (2) 68:11 90:23 deposits (17) 41:18 42:9,10 43:20 43:21 47:10,10 52:3 52:3,12,13,14 53:11 54:16,17 64:22,23 deputy (1) 133:9 derivatives (36) 6:24 7:4 8:10 20:23 45:6,6,24 47:9 48:8 59:6 61:21 62:21 64:21 66:10 77:19 77:20,21,24 78:11 79:23 114:14 116:8 196:20,23,25 197:2 200:8,10,15,21,22 200:23 201:3,4,6,21 describe (6) 51:24 52:9 58:4 108:6 166:9 199:20 described (11) 30:6 54:14 60:17 74:5 89:16 105:7 113:20 126:4 140:2,23 180:17 describes (1) 85:16 describing (3) 11:17 113:14 167:18 description (1) 47:22 designated (1) 209:17 details (4) 16:3 18:9 91:2 132:11 developments (2) 16:20 221:3 devote (1) 215:20 dialogues (1) 130:18 difference (1) 159:25 differences (1) 115:24 different (20) 9:22,23,24 19:11	23:15 44:24,24 79:16 100:19 106:16,20,21 115:9 115:14 137:4 166:8 166:16 190:24,25 216:22 differently (2) 77:25 178:14 difficult (1) 194:15 diligence (8) 125:8,13 126:7,16,20 126:25 151:13 196:5 dimension (1) 176:8 dimensions (1) 176:7 direct (5) 118:9 150:14,16 154:21 220:13 directed (2) 188:17 209:6 directing (3) 24:5,7 199:15 directly (6) 17:18 72:6 79:6 206:23 209:20 220:3 disappeared (1) 18:23 disclosing (1) 141:7 discretion (5) 71:17,17 72:12,13 91:22 discuss (9) 26:3 95:18 96:3 97:11 137:17 155:14 170:13 199:25 200:8 discussed (12) 15:24 16:9 41:3 44:6 65:21 77:8 109:17 114:7 130:16 165:3 199:24 213:3 discussing (7) 13:13 19:3 22:3 40:5 81:11 89:8 112:22 discussion (43) 12:23 13:4,9,16 25:22 25:24 26:7,12 32:15 36:12 40:3 42:9 43:23 44:12,22 46:13 47:13 51:16 57:21 58:14 93:15 94:12 107:18 109:5 109:7,9 111:7 112:3 121:22 127:24	134:19 135:5 164:17 167:7,8 170:25 185:17,20 188:24 193:4 199:7 207:5 209:12 discussions (67) 10:5,6,25 12:18 15:20 15:24 22:16,21,23 35:23 36:21 37:19 37:21,25 38:16 39:8 39:9,18,21 40:6,11 40:12,19,22 42:7,17 43:14 47:24 54:10 64:12,15,17,19 65:17 72:16,18,19 97:12 106:23 122:21,24 123:2,5 123:22,25 124:5,17 124:20 128:25 133:2 134:24 149:15 154:18 155:4,17 158:15 164:8 192:22 199:12,20 200:5 203:9 206:7 207:12 208:7,15 209:8 disparate (1) 10:15 dispute (2) 51:7 182:10 distinction (8) 54:16 60:3 77:18 78:2 159:18 160:5,13 188:23 distinguish (1) 22:10 DISTRICT (1) 1:3 division (1) 20:19 document (67) 6:18,20 12:11 29:15 47:2 55:10 65:24 66:2,6,24 69:7,11 70:13,18 81:15 87:10,14,18 89:23 95:2,15 118:13,16 120:21,23 121:5 149:24 150:2 151:5 153:24 155:15 163:15 167:25 169:15 173:3,5 179:15,17 180:24 181:2 184:21,23 193:7,9 202:6 208:25 211:9,12,15 212:19 215:14 217:22 218:9,10,14 218:16 220:18	223:9,11,13,15,17 223:19,21,23 224:4 224:6 documentation (14) 43:17 47:23 48:16 64:25 65:2 84:3 107:22 124:24 165:25 195:24 203:14 206:4,6 208:14 documented (5) 12:4 55:18,21 57:14 68:15 documenting (2) 45:17 115:10 documents (15) 32:4,19 42:19 54:24 57:15 99:25 112:11 122:12 171:14,16 182:11 192:11 208:12,18 209:3 doing (11) 9:2 43:12 69:6 114:25 134:9 146:5 168:20 182:24 183:3,4 204:23 dollar (4) 116:12 150:13 152:11 164:19 dollars (25) 11:8,20 54:7 93:22 103:12,14,16 105:18 106:12 108:10 117:6,12 119:3 120:9 130:4 141:21 144:11 151:25 152:12 173:12,16,25 177:7 180:21 181:11 Don (3) 133:11 134:8 148:25 Donahue (4) 133:11 134:8 148:25 149:3 double (1) 55:7 doubt (1) 221:14 downside (1) 178:8 draft (94) 24:12,16,18 28:17,20 28:25 29:19 30:11 30:16 31:10,13,17 32:6,24 33:3,12,18 33:25 34:5,10,12,20 34:24 35:8,9,12,17 35:22 37:19 38:14 44:18,20 46:25	47:25 48:5 56:2 63:25 64:4 67:2 69:13 77:5,6 80:7 80:14 81:21 86:10 87:15,21 88:8,9,25 89:2,11,14,25 90:4 90:6,8,12,15 91:8 110:16,18,25 111:16,19,20,23 112:4,5 154:14 155:6,25,25 156:3 158:4,8,9,11 161:3 162:4,13 164:2,3,18 165:5,10,18,23 169:21 185:10,13 186:2 188:5 drafted (9) 26:14,21 27:14,17 50:22 58:11 81:9 82:19 206:25 drafters (1) 85:3 drafting (3) 56:9,20 166:15 drafts (11) 30:19 63:24 64:7 67:4 70:2 107:2 122:7 154:12 155:19 164:12 195:12 draftsperson (2) 86:17,18 drawn (1) 45:9 drop (2) 73:15 221:16 dropped (1) 91:11 drop-dead (1) 220:23 DTC (51) 31:6,7 36:24 40:2,6 40:11,16 44:10 45:19 59:3 67:18,22 67:23 68:4 71:5 84:19,24 90:18 91:3 91:10 121:23 122:9 131:22 132:18 134:15 138:3,5 146:24 149:7 150:10,11,17,24 151:8,16,19,23 152:17 154:16 156:5,6,20 161:7,9 163:7 165:5,7,10,18 166:3 196:7 DTCC (108) 9:8 37:21 40:4,5 60:25 68:15 71:12 85:6 90:7,22,22
---	---	---	---	---

120:17,22,24 121:3 121:23 122:21,24 123:12,21,22 124:5 124:6,17,19,22,25 125:6 126:18 127:2 128:16,19 129:2 130:9,20 132:24,25 133:4,7,11,15,18,22 134:4,21 135:7,21 136:6,8,9,17 137:9 137:12 138:5,17 139:6,19 140:2,5,10 141:5,15,22 142:18 144:4 145:10 146:15 147:4,6,12 147:20,24 149:20 149:25 150:3 152:2 152:19,23 154:18 155:5,11 156:8,14 157:7,14,22,24 158:3,10,12,23,24 159:13,13,15,17 160:12,14,19 163:2 166:14 167:17 168:13,23 186:25 196:3 223:11,13	14:19,21,25 15:14,16 190:25 191:9 Ed (2) 164:17 167:6 Edward (10) 1:12 2:8 6:2,5 222:20 222:22 223:8 225:10 226:5,24 effect (8) 5:19 131:23 132:20 135:16 145:8 146:13 147:17 158:18 effected (1) 131:24 effecting (1) 99:8 effective (1) 195:2 effectively (1) 86:3 effects (1) 96:21 effort (3) 56:20 177:9 217:22 either (11) 22:14 39:17 41:25 47:15 61:3 65:17 76:6 112:25 162:21 165:17 206:23 elapsed (1) 221:21 elect (1) 91:22 electronic (1) 183:7 eliminate (1) 53:14 ellipses (2) 25:13 63:7 EMANUEL (1) 3:18 embodied (1) 203:14 embroided (3) 50:18 114:22,23 emerged (2) 32:6,7 enable (3) 132:20 139:12 146:8 enabled (4) 71:18 109:18 177:13 183:9 encompassed (1) 76:21 endeavor (2) 132:18 175:9 ends (2)	114:10 182:14 engage (1) 102:24 enjoy (1) 19:14 enjoyed (1) 10:11 ensure (1) 212:12 entail (1) 176:18 entered (2) 204:4,14 entering (1) 203:16 entire (5) 70:18 76:25 170:10 181:15 194:23 entirely (5) 71:22 82:17 100:18 167:19 169:17 entities (1) 10:3 entitled (3) 18:5 122:5,19 entitlement (1) 160:3 entitlements (2) 150:9 186:13 entity (6) 10:9 19:11,14,18 20:4 20:6 equally (1) 177:23 equity (2) 197:4,9 equivalent (1) 111:4 erosion (2) 94:13,13 ERRATA (1) 226:2 error (1) 217:21 errors (1) 226:8 ESQ (7) 3:8,15,22 4:8,9,15,16 essence (3) 10:9 58:20 60:19 essentially (2) 45:19 132:4 establish (1) 84:4 established (4) 80:20 88:25 111:12 143:20 estate (6)	150:10,20 157:11 160:21 162:15 167:15 et (1) 1:8 evaluate (8) 82:4,7,10 85:25 102:23 109:14 183:9 186:24 evaluating (2) 188:14 190:2 evaluation (3) 153:9 187:7,9 evaporating (1) 108:25 evening (4) 142:3 143:12 154:5 154:24 event (9) 102:5 103:10 141:3 141:13 178:19 204:12 205:2,25 208:10 events (4) 9:5 23:11 93:14 210:22 eventuality (1) 203:17 everybody (2) 17:9 139:19 evolving (1) 59:2 exactly (13) 38:23 39:18 68:13 73:12,18 74:3,16 90:11 105:20 117:14 133:25 144:21 195:13 EXAM (1) 223:3 examination (3) 6:8 55:3 202:15 example (8) 21:22 43:6 61:2 70:4 78:9 85:6 177:6 205:25 exceed (1) 15:15 exception (3) 49:11 73:21 81:22 exceptions (1) 87:4 excess (18) 93:23 95:8 96:4 97:10 97:14 99:2,9,10,11 141:20 144:10 174:5,24 175:2 182:15 183:24,25 184:13	exchange (10) 16:24 43:4 61:20 62:15 79:23 80:10 120:16 128:9 154:23 167:10 exchanged (4) 32:20 107:3 122:7 164:13 exchanges (12) 32:18 40:23 57:25 61:7 77:12 149:18 155:2,17,19 165:23 196:23,25 exchange-traded (14) 8:4 45:24 47:8,8 48:8 61:21 62:21 64:21 73:4,5 77:19 78:11 196:20 197:2 excluded (20) 8:8 31:8 33:19 48:15 49:12,12 52:4 68:2 68:22 74:21 75:2,12 122:20 187:17 198:23 199:9,22,24 201:6,7 excluding (1) 122:21 exclusion (4) 49:17,17 73:21,22 exclusive (1) 90:23 exclusively (1) 146:12 executed (4) 63:17,20 191:8 208:21 executing (1) 208:23 execution (2) 59:9 195:8 exercise (8) 18:5 72:24 161:13 203:13,19 204:18 212:22 216:7 exercises (1) 119:16 exercising (2) 18:6 205:23 exhibit (64) 6:2,19 63:14,17 65:25 66:12,13,15,18,22 66:25 69:8 87:11 89:6,24 95:3 118:13 118:16 120:13,21 120:23 149:24 150:2 151:6 153:25 155:7 161:3 163:16 168:2 169:16 170:2 173:2,5 179:14,17
E				
E (1) 223:4 earlier (28) 22:17,21 36:2,23 77:8 80:5 82:25 89:16 96:2,13 98:11 112:10 113:21 114:5,7,17 115:15 137:6 140:15 142:2 143:12 154:5,24 162:25 167:10 193:20 202:17 211:24 early (6) 50:13 132:14 148:15 149:10 151:22 178:19 East (1) 3:6 economic (7)				

180:23 181:2 184:20,23 187:21 188:3 193:6,9 198:21 211:8,9,13 215:22 218:9,10,14 223:7,8,9,11,13,15 223:17,19,21,23 224:3,4,6 EXHIBITS (2) 223:6 224:2 exist (2) 27:25 105:14 expect (1) 153:10 expected (7) 13:18 15:11 97:4 117:9,13 120:11 175:20 expeditiously (3) 138:15 221:13 222:8 expert (5) 11:16 78:24 204:11 205:8,20 explain (9) 71:6 136:15 152:18 158:12 159:17 161:12 170:14 191:4 200:12 explained (2) 157:24 158:22 explaining (1) 26:15 explains (1) 193:24 explanation (2) 152:21 185:23 exposure (3) 168:15,24 174:15 express (5) 11:22 33:4 40:14,15 115:22 expressed (2) 46:4 135:19 expression (1) 52:10 extensive (3) 114:24 125:3,21 extent (35) 10:22 26:6,6 40:12,17 41:2,5 44:9 54:22 56:16 61:3 71:16 72:3,12 75:6,7 81:23 83:11 93:21 94:6 97:9 98:25 102:11 104:3 105:14,16 106:7 107:10 110:11 123:2 171:9 172:15 174:22 183:10	197:23 extraordinarily (1) 119:4 extremely (2) 50:10 119:7 e-mail (57) 38:8,20,24 87:13 90:5 95:9,10,11,23 120:5 120:8 121:2,13 150:6 153:20 154:2 154:7,7,20 155:17 156:12 163:23 164:16 167:6,11 173:8 175:16,17 177:10 178:17 179:20 181:5 182:14 183:17 184:16,18 185:2,6 188:6 189:5 193:2 193:12,19,21 194:3 211:17,18 212:5,9 213:18 215:15 217:19 218:6,18,20 219:6,7 e-mails (9) 118:23 121:9 154:23 155:2,3 195:12 205:14,15 206:13 F F (4) 1:17 2:11 225:6,22 face (4) 10:2 92:5 102:8 204:25 fact (15) 9:21 28:3 45:18 62:2 79:4 88:24 99:12 100:3 139:8 155:17 168:22 172:7 191:14 216:13 217:24 factors (1) 123:9 facts (3) 103:2 178:16 226:7 factual (3) 170:25 189:2,3 fair (2) 63:14,23 faith (1) 142:11 falling (1) 136:3 familiar (5) 87:7 104:21 188:12 213:21 216:10 far (8) 19:7 150:18 164:15	172:22,25 175:25 195:19,22 Fargo (2) 53:21 54:7 favor (1) 15:17 FCM (3) 41:13 197:3,6 feared (1) 168:17 February (5) 1:14 2:5 222:23 225:20 226:4 Fed (10) 17:25 135:18,25 136:2 143:24 202:21 203:25 204:2 206:14 207:22 Federal (1) 9:14 Fed's (1) 17:23 feel (2) 21:14 46:12 feeling (4) 53:16 105:23 151:2 195:3 felt (1) 154:11 figure (4) 17:4 138:12 147:21 158:17 filing (1) 5:7 fill (1) 126:5 final (6) 64:5,5,8 140:14 165:17 187:20 finalization (1) 155:15 finally (1) 142:13 financial (5) 62:3 124:11 159:14 160:9 177:18 find (8) 23:8 55:2 66:18 111:8 136:2 176:6 178:6 217:2 findings (3) 126:6,13,20 fine (5) 26:9 94:20 113:5 171:2 199:13 finish (4) 109:20 112:23 163:19	163:20 FINRA (1) 9:12 fires (1) 195:3 firm (2) 141:22 142:13 first (31) 21:5 30:10 32:22 33:10 55:15,22 66:3 66:21 67:10 70:8,16 78:7 85:20 87:12 90:3 95:21 107:3,7 107:15 121:18 123:16 150:7 154:5 154:7 162:11 168:7 181:9 186:16,20 201:22,25 firsthand (1) 183:21 fish (1) 194:16 fit (1) 20:20 five (1) 163:21 Fleischman (4) 21:13 22:20 56:14 104:12 flexibility (3) 72:11,17,22 FLEXNER (1) 3:11 flip (1) 62:11 floor (7) 3:20 166:10,17,18,19 166:20,23 floors (1) 106:21 flows (1) 119:13 fluid (1) 86:11 flux (1) 36:20 focus (7) 78:2 124:22,22 139:2 182:22 188:10 216:2 focused (5) 132:3 146:6 162:24 184:18 188:11 focusing (3) 81:6 122:14 145:20 folk (1) 112:13 folks (5)	9:13 46:14 47:14 117:16 128:16 follow (3) 69:10 80:5 187:7 followed (5) 69:17,22 70:2 195:25 203:2 following (6) 10:7 11:20 93:15 136:21 180:9 183:3 follows (2) 6:7 85:16 follow-on (1) 143:17 follow-up (1) 143:15 force (1) 5:18 foreign (14) 40:23 41:2,15 61:17 61:20 62:7,14 77:12 78:9,11,13,14 79:6 80:10 forgetting (2) 21:14 193:5 forgive (1) 29:24 form (64) 5:10 7:7,19 13:2 14:13,22 20:11 23:25 26:5,23 27:3 34:7 35:7,10,12 37:14 38:5,19 43:22 45:2 47:19 50:17,17 53:23 57:7 58:16 61:9,23 63:10 67:19 69:19 71:9 81:18 82:12 85:19 86:8 91:5 100:11 102:18 110:13 115:12 116:5 117:19 121:24,25 122:10 122:23 125:11 130:3 133:21 134:16 146:16 156:9 160:24 167:12 183:7 184:3 189:21,25 192:7 208:13 210:14,16 211:4 formal (1) 12:9 formed (2) 160:23 189:21 forms (2) 43:5 48:15 formulation (1) 116:2 forth (9)
---	--	--	---	---

23:24 24:19 25:7 32:25 33:5 58:12 192:2 214:11 225:11 forward (8) 8:20 100:17 144:12 151:24 152:4 183:12 194:18 220:10 forwarded (2) 175:18 180:11 found (1) 55:7 foundation (9) 13:19,20 14:14 72:3 78:19 80:19 111:11 116:14 117:20 four (1) 128:24 frame (12) 8:18 14:23 27:11 30:9 38:3 77:4,5 86:9 109:18 135:9 143:22 184:3 frequently (1) 70:5 Friday (1) 184:9 front (3) 187:22 198:21 209:22 fro'ing (1) 216:8 fry (1) 194:16 full (4) 25:14 33:17 168:7 169:25 fully (2) 177:14 183:5 function (1) 82:4 fund (11) 42:2,10,16 43:15 44:19 47:15,16 78:16,25 79:2,7 fundamentally (2) 159:24 200:19 funded (2) 98:8,9 funds (6) 44:6 59:7 88:3 119:23 119:24 150:9 further (13) 5:9,15 15:8 75:19 82:10 145:3 148:5 164:17 167:6 174:15 202:9 222:14 225:15 future (3)	13:7 174:13 176:23 futures (12) 7:6,9,10,14,17,21,23 8:3 73:4,6 179:3 197:7 <hr/> G <hr/> Gaffey (11) 3:8 202:11,13,16 214:8,16 215:7,10 218:8 222:13 223:5 gain (7) 13:17 14:5,11,19,21 14:25 15:11 Gallagher (4) 9:17 13:25 17:17 202:19 GCGSH0002699 (1) 118:14 gee (1) 130:19 general (12) 15:9 28:11,12 116:17 129:19 133:9 165:5 165:7 203:4 205:19 207:6 219:18 generally (3) 16:17 84:10 202:22 generated (1) 87:19 Gerard (4) 125:19 127:18 129:6 132:16 getting (13) 15:14 22:11 65:3 77:9 123:7,8,23 171:19 171:21,25 172:24 186:15 221:4 Giddens (2) 6:13 164:4 give (13) 28:4 31:18 63:12 78:9 81:7 94:20,21 130:17 147:4 153:7 168:11 187:20 203:4 given (6) 27:20 30:22 54:10 72:22 102:15 225:14 go (28) 12:9 18:7 21:24 30:18 32:21 43:11 46:13 47:25 49:19 57:10 60:21 63:23 64:6 82:10 96:12 113:10 116:15 131:25 140:22 144:12 151:12,24 152:4	156:6 189:23 210:3 215:7 221:8 goes (2) 161:10 216:23 going (95) 6:14 8:20,25 16:18 17:7,10 19:12,16 22:5 26:7 31:9 33:24 37:20 38:10 38:15 39:14,22 40:7 41:3 49:5,5 50:11 52:13,24 60:20,25 62:2 63:12,21 65:24 69:5,7 71:18 72:2 84:16 85:23,25 87:11 90:3 94:10 95:9 96:6 99:20 100:17 112:23 113:3 117:2 119:13 120:10 121:6,14 122:16 123:3,12,15 124:13 125:5 131:22,25 132:2 133:23 136:11,25 137:13,24 138:11 138:12 139:7 140:19 141:23 145:23 146:17,20 146:24 147:23,25 150:12 156:6,7 174:20 177:24 181:24 182:10,21 183:11 186:7 188:22 192:16 194:23 197:22 199:10 201:11 203:19 205:2 221:9 Goldman (1) 221:12 good (5) 17:9 54:18 142:10 167:22 176:15 Gotshal (7) 165:3 208:8,17 220:2 220:4,6,15 Gotshal's (1) 113:15 gotten (3) 144:4 169:2,11 Gottlieb (3) 2:9 4:11 169:18 government (7) 98:17 103:25 108:3 110:2 113:23 173:19 182:6 Granfield (1) 21:11 greater (2) 53:17 124:10	grounds (2) 162:2 199:11 group (8) 27:16 56:10,12,13 58:11 105:8 128:4 129:9 grunt (3) 105:21 106:2 110:8 guarantee (14) 41:25 42:9,16 43:15 44:6,19 47:16 78:25 79:2,7 88:2 130:4 167:13,19 guess (8) 16:7 68:6 79:25 105:9 154:24 212:2 213:10 215:2 <hr/> H <hr/> half (2) 113:3 193:20 halfway (1) 67:8 hallway (5) 104:6,24 105:5 106:15 113:14 Hamilton (2) 2:10 4:11 HAMISH (1) 3:15 hand (2) 49:15 225:20 handed (5) 27:2 28:6,8 29:17,19 handing (1) 55:9 handle (1) 7:13 handled (6) 7:15 40:7 61:2 68:15 123:15 132:3 handling (3) 29:15 45:15 195:24 handwriting (1) 30:12 handwritten (9) 26:23 27:4,5,9,19 28:5 29:20 49:3 54:24 hang (3) 36:15,15 214:22 hanging (2) 194:11,13 happen (12) 31:20 38:10 102:16 104:6 106:14 113:22 153:12 166:15 178:10	186:7 207:18 221:9 happened (11) 22:4 70:5 127:11 139:23 141:2,13 166:16 178:18 181:12,20 182:5 happening (1) 156:22 happens (2) 62:12,13 happy (1) 140:10 hard (1) 198:2 Harvey (8) 93:17 97:19,21 103:6 104:11 105:10 106:5 109:23 Hassan (2) 4:9 6:12 hate (1) 76:9 hear (3) 117:8 126:19 144:3 heard (4) 42:14 52:9 112:19 203:23 hearing (6) 42:15 53:5 59:3 138:23 149:3 218:3 HEDGES (1) 3:18 held (16) 2:8 22:17 27:7 30:14 31:11 48:14 50:3 51:2 54:14 60:12 90:22 114:13 116:7 124:20 173:20 176:4 help (4) 15:9 136:15 153:23 198:6 helpful (2) 135:25 170:15 hereinbefore (1) 225:11 hereunto (1) 225:19 highlighting (1) 87:25 Hirshon (4) 133:10 148:22,23 154:25 Hirshorn (2) 165:13,15 hold (1) 150:17 holdback (2)
--	--	---	--	--

130:5 152:11 holding (2) 51:4 173:17 HOLDINGS (1) 1:8 honest (2) 170:9 218:5 honestly (10) 18:8 19:5 105:2 128:22 143:14 218:2,4 219:4,19 220:12 honor (1) 147:8 hook (1) 61:12 hooked (1) 132:2 hoping (1) 17:9 hour (3) 52:25 113:3 193:20 hours (3) 50:21 105:3 149:10 house (5) 103:11 175:7 191:9 191:10 195:25 Hubbard (2) 4:4 6:11 huddling (2) 104:14,25 Hughes (15) 4:4 6:11 12:20 57:22 127:18 129:5 131:2 131:11 195:15 196:12 197:16,19 197:20,24 202:7 HUME (41) 3:15 20:11 22:5 37:14 42:4 47:17 52:24 55:5 69:19 70:12 72:2 74:19 78:18 80:18 85:19 86:8 88:10,15,20 92:12 107:12 108:15 112:23 113:8 115:16 116:9 121:25 128:11 160:15 163:17 169:6 170:22 171:8 188:22 189:8 197:22 201:13 210:14,16 214:20 217:8 hundreds (3) 119:2 177:24 180:20 hurry (1) 221:14 hypothetical (2)	78:23 102:24 <hr/> I identification (11) 6:3 118:18 120:25 150:4 173:7 179:19 181:4 184:25 193:11 211:11 218:12 identified (11) 17:22 18:21 26:14 29:12 31:21,25 36:5 94:16 99:16 104:23 176:19 identify (3) 57:4 58:6 80:23 identifying (1) 108:23 immediate (2) 15:16 178:15 immediately (1) 194:6 impact (5) 145:9,14,16,18 146:6 impasse (1) 151:8 implement (1) 137:15 implication (2) 146:21,23 implications (5) 103:22 109:6,10 146:5 172:10 implicit (2) 47:23 102:12 implicitly (1) 168:18 import (2) 161:21 216:4 important (5) 51:13 71:24 72:16 108:25 109:2 impose (1) 158:16 imposing (1) 18:16 impossible (2) 76:12 160:22 impression (7) 17:6 96:5,21 146:3 163:9 169:10 182:20 include (18) 7:6,8,10 33:20 48:21 49:2 50:6,25 51:10 52:13 53:24 54:25 59:19 73:15 74:21 129:10 149:11	172:23 included (38) 7:17 21:10 27:6 30:17 33:3 34:12,15 39:21 40:8,12 48:10,12 49:12,23 50:3 54:13 62:9 63:20 68:18 73:14,17 75:12 76:4 76:13 79:24 89:15 90:19,21 91:14 111:17,20,21 127:18 155:10 198:17 210:12 211:3,25 includes (4) 30:13 41:14 66:9 73:24 including (17) 13:24 27:13 29:8 43:20 48:19,22 50:6 54:12,24 67:21 120:8 137:14 154:23 194:19 213:4 214:2,4 inclusion (1) 43:20 inclusions (1) 59:20 incomplete (1) 76:10 inconsistent (2) 52:16 200:19 incorrect (1) 25:19 INDEX (1) 223:2 indicate (1) 146:10 indicated (4) 23:18 133:25 183:18 198:17 indicating (1) 217:20 indirect (1) 220:14 indirectly (3) 40:10 41:20 220:6 individual (2) 125:19 210:2 individuals (2) 57:18 155:10 inference (2) 45:10 46:5 inferences (1) 51:11 inferred (3) 46:7 99:24 119:6 information (16) 17:4 102:23 109:13	109:15 117:22 120:2 128:4 130:22 142:12 144:4 173:24 177:10 179:25 184:14,15 184:16 informed (1) 198:2 inherent (1) 178:11 initially (1) 94:15 input (1) 32:4 inputted (1) 70:7 inserted (5) 30:12 31:11 93:10 106:8 114:11 inserting (2) 104:3 115:8 insertion (1) 28:23 Insofar (1) 156:24 insolvency (1) 206:2 insolvent (1) 204:25 instruct (2) 166:25 201:12 instructions (2) 137:2 161:8 insure (2) 75:6,7 integration (1) 10:13 intended (8) 25:13 68:22 103:7,8 115:6,25 200:15 201:2 intending (1) 65:6 intent (2) 46:7 188:21 intention (7) 186:17,17,21 187:9 187:11 188:19 189:5 interaction (1) 118:9 interconnected (1) 190:4 interest (1) 219:11 interested (3) 139:22 143:25 225:18 interfere (1)	221:20 interim (2) 111:20 120:16 intermission (1) 53:7 internal (4) 87:21 128:8,13 168:19 internally (3) 12:22 142:9 221:21 interplay (1) 86:2 interpret (13) 85:25 115:17 161:21 170:23 171:2,13 172:9,14,17 180:12 187:19 188:16 201:14 interpretation (3) 162:2 171:6 188:18 interpreting (1) 86:4 intervened (1) 222:6 investment (5) 15:5 20:13,18,19 116:21 invite (2) 33:11 199:2 involve (1) 95:11 involved (18) 8:12 42:25 56:9,17 57:23 58:2 59:22 72:6 100:6 104:16 127:15 156:19 197:19 208:22 209:7,12,21 210:21 involvement (3) 9:5 15:18 124:16 involves (2) 44:9 57:9 involving (1) 36:13 in-flows (1) 175:20 Isaac (1) 133:9 issuance (1) 135:10 issue (54) 9:21 17:18 18:23 20:3 32:20 44:11 47:2 52:23 53:13,15,19 54:11 69:6 73:16 98:10,11,13 103:12 103:23 104:2 106:11 107:2,4,4,6 107:8,15,15,16,25
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108:7,8,12,13,13 132:6 134:2,15 135:7 137:9,13,20 138:14 140:10 147:6,14 167:9 185:10 193:4 194:15 207:14 209:15 215:23 222:3 issued (2) 134:21 217:17 issues (20) 8:21,24 9:3,4,20 12:21 22:2 31:6 34:21 36:20 37:2 45:8 73:11,19 104:19 106:19,19 115:4 127:6 196:2 issuing (2) 133:19 143:2 italicized (1) 214:10 italics (1) 212:22 item (3) 73:3,20 83:6	9:4 173:20 JPM (1) 182:7 Jr (1) 164:6 justified (1) 188:15 justify (1) 144:14 justifying (1) 144:10	163:13 164:25 165:2,9 166:9,18 167:7 169:19 181:12,20 182:2,5 183:12,20 184:10 188:4 189:20 192:15 196:11,12 202:3 208:13,21 213:13,25 214:22 215:11,13,19 216:6 217:6 220:5 221:9 221:11 knowing (2) 91:2 97:6 knowledge (21) 15:8 20:25 25:21,25 25:25 46:2 57:24 86:16 91:10 92:20 117:7,25 125:17 128:15 209:8,10 210:3,7,21 213:3 220:13 known (2) 118:22 178:16 knows (1) 116:10 Kobak (3) 164:6,9,11 Kobak's (1) 170:7	62:22 63:5,19 66:9 70:10,20,24 73:16 73:24 74:7,13 75:5 76:13,15 80:2,11 81:8,10,24 82:8,21 83:3,4,16,18,20 84:20,20,21,24 85:3 86:18 88:2,3,8,20 88:24 89:8,13,15,20 92:5 94:19 102:10 105:10 107:10,21 110:11 111:20,21 112:14 114:7,8,18 114:20,23 115:3,14 115:15 162:24 187:10 190:12 195:16 206:23,24 206:25 211:25 212:11,18,21 213:2 213:13,17,23 214:10,10 215:22 220:14 lapse (1) 181:24 large (5) 7:15 117:9 119:4 176:24 179:11 largely (1) 152:17 largest (1) 116:21 Larocca (6) 125:19 127:19 129:6 131:17 132:13,16 Larocca's (1) 132:7 Larry (13) 133:8,16,24 137:8 138:9 142:20 144:7 147:13 148:6 152:3 152:14,16,18 late (9) 129:2 142:3,15 151:23 153:13 155:19 195:14,18 221:11 law (8) 94:6 102:11 104:4 105:12,16 106:7 107:11 110:12 lawyer (3) 29:14,16,20 lawyers (9) 42:24 56:21 64:13 65:5 103:21 104:21 149:18 207:14 210:19 lay (1) 180:12	LBi (12) 10:11 54:17 59:15,21 60:5 83:6 91:23 148:4 150:10 161:9 173:17 204:10 LBi's (1) 90:15 leader (1) 128:3 leading (3) 22:18 47:22 210:22 learn (4) 125:13 175:13 201:20 201:24 learned (10) 173:11,15 175:15,15 176:5 201:22 202:2 202:3 216:24 221:11 leave (4) 71:22 84:16 103:21 171:15 leaving (4) 14:18 102:2 155:3 172:19 led (2) 93:15 127:25 left (4) 98:16 101:3 102:17 148:3 legal (3) 159:25 171:5 212:8 Lehman (133) 1:7 3:5 8:10 9:21 14:12 16:19 18:16 18:17 19:10,21 20:14 26:8 27:2,3 28:22 29:3,5,7,15 29:17,20 31:7,16 32:10 35:24 36:4,5 36:14 37:8,11 38:2 38:17,21,23 39:16 44:9,14,23 45:11 46:3,14 47:9,14 51:3,22 56:24 58:3 60:6,6 61:18,19 64:20 75:16 76:2 77:14,17 78:14 79:2 79:5,13 83:10 85:8 93:23 94:16 99:14 100:16,22 101:7,16 108:4 109:2 110:19 113:22 116:20 121:23 122:8 124:19 130:6 133:20 146:14 150:24 156:6,19,20 157:6,10,25 158:24 159:11 160:13,14
J J (10) 1:12 2:8 6:2,5 222:20 222:22 223:8 225:10 226:5,24 James (4) 6:12 164:3,5,11 jeopardy (2) 53:18 220:21 Jersey (1) 2:14 Jim (5) 38:24 173:24 181:6 181:10 189:4 JOB (1) 1:18 jockeyed (1) 166:11 John (1) 125:24 Jointly (1) 1:8 Jonathan (11) 12:20 57:22 127:18 129:5 131:2 195:14 196:12 197:16,19 197:20 202:6 Jones (2) 3:4 202:14 Josephine (3) 211:19 212:6,10 JP (2)	K Kaplan (2) 12:21 210:20 keen (1) 220:12 keep (4) 16:10 151:2 194:11 194:12 kind (6) 48:13 117:14 125:4 138:15 146:21 176:18 kinds (3) 7:23 92:10 172:16 Klein (3) 57:22 129:6 131:14 knew (5) 86:13 97:6 98:6,7 118:21 know (129) 6:10,16,17 7:12,12 12:3,19,21 14:25 16:4 17:2 19:7 20:4 20:6,14,15,16,20,22 26:9 27:25 28:2,3,8 28:19,21 29:6,16,18 29:18 30:21 32:9 45:25 47:20 49:10 53:10,12,12 57:17 57:20,21 58:2 66:17 67:4 69:14,21 72:19 73:4,12 76:9 77:19 87:18,20 90:2,18 101:9,14 105:2 110:6 111:2,22 116:3,6,11,16 117:14,16,24 119:25 121:12 122:12,13 123:25 125:5 127:17,25 134:9 135:25 136:4 138:10 139:10 140:13 143:21 144:15,19,21 149:8 151:14 153:15 154:10,16 155:3,12 155:16 162:17	L lack (8) 13:20 45:17 48:25 53:6 72:3 116:13 163:12 207:16 lacked (1) 138:7 lacking (1) 78:19 lacks (1) 80:18 language (156) 12:5 24:10,15,16,18 24:24 25:6,7,10,12 25:16 26:2,12,13,15 26:22 30:3,6 31:2 32:2,9,24 33:3,5,8 33:12,18,25 34:2,6 34:9,13,16,18,25 35:4,9,11,25 36:3,3 36:3,5,18,19,22 37:3,5,8,12,16 44:16,19 45:4,7,13 45:16,20 46:2,4,15 46:18,25 48:2,6,10 48:12 51:8,10 53:25 55:23 56:2,6,18,20 56:25 58:11 62:16	lapse (1) 181:24 large (5) 7:15 117:9 119:4 176:24 179:11 largely (1) 152:17 largest (1) 116:21 Larocca (6) 125:19 127:19 129:6 131:17 132:13,16 Larocca's (1) 132:7 Larry (13) 133:8,16,24 137:8 138:9 142:20 144:7 147:13 148:6 152:3 152:14,16,18 late (9) 129:2 142:3,15 151:23 153:13 155:19 195:14,18 221:11 law (8) 94:6 102:11 104:4 105:12,16 106:7 107:11 110:12 lawyer (3) 29:14,16,20 lawyers (9) 42:24 56:21 64:13 65:5 103:21 104:21 149:18 207:14 210:19 lay (1) 180:12	

160:20 161:14 164:4,21 168:15 170:17,18 176:21 180:3,9 185:16 186:14 187:14,15 190:23 191:14,16 191:21,22 192:21 194:6 196:18,24 198:16 199:13,21 200:3 203:16 204:4 204:5 207:13,22 208:8,16 209:13 210:10,10 213:4 214:3 217:18 220:15 226:3 Lehman's (13) 20:21 26:15 32:7 38:9 68:11 79:22 95:18 150:16 174:9,18 183:16 184:8 196:20 Lehman-related (1) 166:22 Leinwand (3) 21:12 28:14 56:16 lengthy (1) 121:5 letter (54) 29:9 30:8 52:2 53:25 55:22 58:22 62:17 63:2,4,18,21 80:12 80:15 83:25 84:11 84:13 90:7,9 93:10 114:11 149:20 158:8,9,11 159:11 159:13,13 165:5,7 165:10 166:3 168:3 169:17,19,22,24 170:2,8,11 171:4 185:9 186:12,18,21 187:21 188:5 192:5 209:14 210:12,24 211:3,5 216:15 217:23 letters (3) 181:20,23 182:3 letting (1) 221:8 let's (5) 30:9 33:9 211:7 215:7 218:8 level (4) 93:23 95:8 98:8 158:15 Leventhal (3) 135:18 136:7 143:11 leverage (1) 194:21 Lewkow (2)	21:13 104:11 liabilities (28) 31:7,8 61:13 68:20,22 68:24 75:9,11 122:20 123:4 124:14,15,24 125:4 131:10 141:20 142:7 159:15 174:19 185:11,15 186:22 187:4,13,17 190:23 192:10,19 liability (11) 130:10 174:22 175:10 176:9 191:9,12,14 191:20,23 192:16 192:18 Liberty (2) 2:10 4:13 lien-free (1) 172:5 light (5) 26:16 51:8 52:11 78:19 108:24 liked (1) 175:15 limit (4) 98:24 99:10 101:22 175:5 limitation (9) 59:19 93:21 98:2 99:5 99:7,14,16 102:4 172:23 limited (11) 60:15 81:23 83:13 101:20 135:22 149:7 150:13 152:10 167:12 183:5 186:8 limiting (5) 52:23 81:6 93:16 151:20 186:12 limits (1) 105:12 Lindsee (1) 21:11 line (15) 23:20 73:3 143:19,24 154:5,7 164:3,5 226:9,11,13,15,17 226:19,21 lines (4) 55:15 70:25 91:18 94:3 liquidate (2) 177:2 194:6 liquidated (3) 174:14 177:8 207:19 liquidating (1) 134:5	liquidation (5) 100:18 153:4 164:4 204:12,18 liquidations (1) 144:22 liquidity (1) 179:12 listed (8) 7:21 8:6 45:6,6 77:20 77:20 79:23 200:23 little (8) 10:8 18:20 29:24 51:17 75:19 186:15 210:4 216:22 LLP (6) 2:10 3:4,11,18 4:4,11 locate (1) 28:20 located (1) 166:11 location (1) 49:8 locations (1) 90:22 long (9) 15:4 63:8 104:24 128:24 154:12 170:20 171:23 172:3,7 long-term (1) 15:11 look (24) 30:18 33:11,12 35:16 62:25 63:13,25 64:7 66:8 67:3,5,11,14 73:20 91:19 121:16 125:6 148:4 150:6 153:20 161:2 170:10 195:10 218:16 looked (6) 16:22 55:6 97:6 155:25 175:19 176:17 looking (8) 66:3,5 80:5 83:17 118:6 122:13 194:22 219:16 looks (7) 6:21 69:13 71:14 74:4 193:15 211:17 218:18 lot (11) 32:17 120:7 129:12 130:16,17 131:19 144:20 148:8 175:14 208:4 216:8 lower (1) 166:23	ludicrous (1) 132:22 lunch (5) 112:24,25 113:5,6,7 L-E-I-N-W-A-N-D ... 21:12 <hr/> M <hr/> Macchiaroli (16) 9:17,19 11:2 12:24 13:5,10,17,22 16:9 16:12,17 95:19,24 96:14 212:3,11 Madison (1) 3:20 magnitude (1) 117:14 Maguire (35) 4:8 6:9,10 24:4 53:2 54:18,22 55:4,11 63:16 66:16 74:10 80:22 88:13,18 89:4 113:4,9,12 115:19 118:12 156:16 163:20 167:22 173:2 179:14 180:23 184:20 188:8 189:3 193:6 196:14 199:15 202:9 223:4 Maguire's (1) 202:18 maintained (9) 60:2,4,5 75:23 76:11 79:13 83:6 196:18 196:24 major (1) 15:5 maker (1) 196:10 making (9) 14:4 15:4 33:19 135:20 139:13 143:3 149:2 190:20 192:14 management (3) 20:13,18,19 manifested (2) 106:2 109:25 manipulated (1) 183:8 manner (2) 132:19 136:12 March (1) 169:18 margin (51) 33:4 38:2,6,10,11,16 38:22 39:8,22 40:4 40:5,12,14,15,18,21	40:23 41:20,25 42:10,16 43:2,14,24 44:19 47:15 59:6 78:15 88:2 116:24 117:6,11 118:21 119:5,8 173:12 174:5 175:5 176:4 181:17 182:15,17 182:18 183:24,25 184:13 196:18,22 196:24 198:17 199:8 margined (1) 40:10 mark (13) 118:12 120:21 149:24 173:2 176:10 178:3 178:22 179:14 180:23 184:20 193:6 211:8 218:8 marked (32) 6:3,19 35:5 65:25 66:25 69:8 87:11 89:24 95:3 118:17 119:11 120:24 150:3 151:6 153:25 155:6 161:3 163:16 168:2 169:16 173:6 179:18 181:3 184:24 193:10 211:10,13 215:15 218:11,14 223:7 224:3 marker (1) 73:10 market (8) 11:15 50:15 176:10 177:2,4 178:5,16 179:12 marketplace (2) 145:22 221:3 markets (5) 41:15 160:9 178:20 179:7 222:9 marks (1) 119:15 markup (7) 26:24 27:2 55:2 67:5 67:10 112:7 115:22 marriage (1) 225:17 Mary (4) 1:17 2:11 225:6,22 master (4) 206:4,5 208:25 209:6 matter (8) 25:15 79:16 103:5 171:16 189:22 205:19 207:6
---	--	---	---	--

225:18 mattered (1) 189:11 matters (1) 132:5 Mazzuchi (6) 21:16 90:6 122:13 154:23 155:4 163:24 Mazzuchi's (2) 164:16 167:6 McDaniel (9) 38:25 39:4 173:9 181:6,10 182:14 185:2 192:23 193:12 McDaniel's (1) 189:4 McLaughlin (5) 21:11,22 22:20 28:13 56:15 mean (22) 12:19 14:8,24 18:18 27:13 35:3,4 50:20 68:6,13 79:8 96:19 100:14 115:9,13 128:9 144:23 159:9 195:13,19 200:12 215:12 meaning (5) 98:20 110:9 180:8 184:7 200:20 means (5) 80:21 101:11,13 145:22 170:7 meant (12) 11:12 60:15 111:2,3,8 115:20,21 134:3 139:4 150:8 191:4 192:19 mechanism (2) 131:22 163:4 meet (1) 197:20 meeting (14) 109:23 123:14 138:3 138:7 139:5 147:3 147:11 151:9 153:11 156:4,13 168:22 198:5,10 meetings (6) 125:3 166:20 197:11 197:15,24 198:11 member (9) 61:4 79:5 85:8 119:15 119:21 140:19 160:8 180:3,14 members (4) 56:12,13 61:7 126:2	memory (1) 215:13 mention (1) 41:25 mentioned (6) 6:23 43:15 45:4 76:22 95:25 197:10 merchant (1) 197:7 merely (1) 72:11 met (1) 198:4 Michael (5) 57:22 90:6 122:13 129:6 131:14 midnight (6) 153:14,16,16 195:19 195:20,22 midway (1) 33:17 Mike (21) 9:16,19 12:23 13:4,10 13:16,22 16:9,12,16 17:2,13 21:16 95:19 95:24 96:2 154:22 155:4 212:3,10,19 Miller (13) 93:17 97:19,21 98:19 103:6,24 104:11 105:11 106:5,6 107:17 109:24 110:6 million (33) 58:23 93:16,22 94:21 98:16,21 100:8,14 101:5,13 105:18 108:8,9 109:11 110:20 130:4 138:6 139:7 141:21 142:8 144:11 150:13 151:21,25 152:11 152:12 153:6 164:19 168:21 177:6 181:19 182:6 182:17 millions (4) 119:2 177:7,24 180:20 mincing (1) 34:19 mind (8) 59:4 65:16 83:21 102:9 118:4 135:3 151:21 219:19 minds (12) 115:5 123:14 138:3,8 140:16 147:3,12 151:10 153:11	156:4,13 168:23 minute (2) 136:3 215:8 minutes (3) 53:4 105:3 163:21 mischaracterized (1) 81:19 mischaracterizes (3) 71:10 107:12 161:18 mischaracterizing (1) 99:4 miscommunication ... 18:13 misrecollection (1) 120:7 misremembering (1) 195:23 missed (1) 43:11 mistyped (1) 111:13 misunderstanding (2) 18:22,24 misunderstood (1) 128:12 mixed (1) 178:7 mode (1) 100:18 model (1) 177:14 modification (2) 45:22 114:21 modifications (3) 34:14,15,15 modified (3) 45:21,21 89:15 moment (2) 177:19 203:7 Monday (21) 53:17 118:25 132:14 137:2 148:15 149:11 151:22 168:13 175:21,23 175:23,24,25 177:25 178:24 179:7 180:4 220:21 221:2,23,25 money (2) 116:20 178:24 Montal (3) 133:10 148:13,14 Morag (80) 4:15 7:7,19 8:18 13:2 13:19 14:13,22 16:10 21:14,15 23:25 24:6 25:11 26:5 27:11 34:7	35:7 37:15 38:3,5 38:19 44:8 45:2 47:19 53:23 54:21 56:4 57:7 58:16 61:23 62:24 63:16 64:3 66:19 67:7,19 68:5 69:20 70:14 71:9 72:5 74:9,11 77:4 81:18 85:23 86:9 88:22 91:5 93:11 97:15 99:3 100:11 102:18 109:20 110:13 111:11 115:12 116:5,13 117:19 121:8,24 122:23 125:11 126:9,21 128:10 133:21 134:16,23 135:9 141:6 145:11 146:16 156:9,15 161:17 162:10 Morgan (3) 9:4 173:20 221:12 morning (18) 50:10,14 132:14 148:16 149:10,11 168:13 175:23,24 175:25 176:2 177:25 178:2,24 179:23 180:4 193:13 221:25 motivated (1) 92:15 mouth (1) 96:19 moved (1) 34:13 moving (1) 189:17 multiple (1) 125:15 mutual (1) 146:7 <hr/> N <hr/> N (2) 198:24 201:10 name (3) 6:10 226:3,5 names (2) 57:17 125:23 natural (1) 200:25 nature (9) 11:15 93:7,13 94:22 110:22 111:2,18 130:23 205:18 Navin (2)	175:18 179:21 near (1) 195:19 necessarily (16) 15:19 17:13 21:21 69:5 76:5 77:22 85:21 89:2 95:5 99:17 100:12,19 101:24 102:20 174:25 177:21 necessary (12) 19:25 36:6 37:23 45:10 48:24 50:8 51:9 73:14 109:14 132:21 137:15 212:12 need (19) 6:16 36:17 46:12 52:15 62:17 83:15 89:25 130:20 132:23 138:13 144:10 150:24 151:3 178:22 188:2 193:24 194:5 203:10 209:14 needed (20) 8:24 13:6 17:4 19:21 26:16 44:21 45:13 45:21 46:17 73:10 73:11 80:6,12 85:4 112:17 131:23 143:21 196:2 204:6 210:11 needing (1) 44:16 negative (2) 50:14 51:11 negotiate (2) 71:7 92:18 negotiated (5) 57:5,12,13,18 171:17 negotiating (2) 17:18 64:19 negotiation (5) 47:21 64:25 65:13 104:17 136:5 negotiations (13) 41:11 57:16,23 65:8 68:16 114:24 124:25 135:21 138:17 139:12 144:3 154:21 166:14 Neither (1) 214:16 net (11) 11:7,9,12,19,25 12:17 12:25 13:14 175:19 180:13 186:13
---	---	---	---	---

Neuberger (1) 86:25 never (9) 25:21 44:11 45:25 66:20,23 139:9 145:13 184:11 189:20 new (20) 1:3,13,13 2:10,10,13 2:14 3:7,7,21,21 4:7 4:7,14,14 19:14 84:19 225:3,5,9 night (21) 123:14 127:3 128:16 129:2,23 130:14 132:14 139:25 142:16 144:8 148:6 148:15 149:4,8 151:23 153:13 168:8,12 175:25 194:24 221:11 nod (3) 105:21 106:2 110:8 nodding (2) 180:5,6 noise (1) 221:19 noncash (2) 50:25 173:23 nonsecurities (1) 51:2 non-inclusion (1) 88:24 non-U.S (1) 77:20 non-769 (1) 58:22 North (2) 10:17 15:5 Notary (2) 2:13 225:8 note (9) 21:4 23:17 24:12 25:11 46:25 113:16 164:2 190:22 212:18 Noted (1) 222:18 notes (5) 27:19,23 28:5 54:24 185:13 notice (8) 134:15,22 137:11 146:12 210:22 217:18,20,24 notwithstanding (3) 10:16 147:15 171:22 NSCC (1) 161:8	NSCC's (1) 161:9 number (14) 19:4 32:18 34:12 36:19 37:2 56:21 98:6 116:16 117:9 194:19 197:10,13 211:14 218:15 numbered (1) 194:4 numbers (2) 95:16 182:16 NW (1) 3:13 <hr/> O <hr/> oath (1) 5:18 object (43) 7:7,19 13:2 20:11 22:5 26:5 34:7,8 35:7 37:14 57:7 58:16 61:23 67:19 69:19 70:12 71:9 72:2 78:18,21 81:18 85:23 91:5 100:11 102:18 110:13 115:12 116:13 117:19 121:24,25 122:23 125:11 133:21 146:16 156:9 174:2 188:22 192:6 197:22 199:11 210:14,16 objecting (1) 24:4 objection (40) 13:19 14:13,22 23:25 24:2 37:15 38:5,6 38:19 42:4 45:2 46:4 47:17,19 53:23 69:20 71:10 72:5 77:4 80:18 85:19 86:8 92:12 97:15 99:3 100:5 107:12 108:15 111:11 115:16 116:5 134:16 145:11 160:15 161:17 162:10 166:7 169:6 184:2 217:8 objections (1) 5:10 objective (1) 50:12 objectives (1) 125:16 obligation (9) 72:23,24 92:19 130:3	178:23 186:12 191:17,19 192:13 obligations (18) 59:15,21 60:19 61:19 68:11,19 75:11 84:4 114:13 116:8 124:11 150:8 174:11 178:15 186:9,14 190:8 192:3 observation (1) 186:2 obstacles (1) 17:10 obtain (3) 13:11 183:15 197:12 obtained (1) 137:5 obvious (2) 59:20 210:25 obviously (9) 22:16 35:13 36:25 82:9 87:11 114:20 174:25 175:24 178:4 OCC (56) 9:9 18:14,18,23 38:10 38:12,18 39:4,5,7 40:2 42:3 44:10 85:6 118:23,24 120:3,6,10 173:13 173:16 176:4,23 178:21,24 180:2,9 180:24 183:16,18 183:25 184:21,24 185:17 186:13 187:2,5,14 189:16 190:9,21,24 191:24 191:24 192:3,14,15 193:7,10 194:5,13 194:21 196:7,18 223:21,23 occur (1) 54:12 occurred (2) 39:19 140:14 OCC's (2) 174:24 193:22 OCC36408 (2) 181:3 223:20 offered (1) 190:10 offers (1) 190:11 office (1) 21:17 officer (1) 5:17 offices (4)	2:9 113:15 125:8 133:5 OK (9) 25:3 66:4 67:9 70:18 88:7 167:21 202:12 211:7 218:8 OLIVER (1) 3:18 once (4) 35:22 134:3 157:5 195:15 ones (2) 27:6 221:24 one-on-one (1) 143:18 ongoing (1) 174:19 open (10) 53:17 69:6 140:20 143:19,23,24 175:21 178:20 179:8 206:12 opened (1) 178:18 operate (1) 11:3 operated (3) 9:22 10:23 11:24 operational (4) 131:21 132:4 137:16 158:15 operations (12) 13:7 124:21 125:18 125:25 126:17,24 128:15 141:16,17 141:24 149:16 158:21 opinion (1) 82:12 opportunity (2) 46:9 96:11 opposed (7) 53:11 60:4 110:8 111:13 155:17 178:11 214:14 opposite (1) 177:4 optimistic (4) 17:7 96:6,14,22 option (5) 92:16 162:9 185:16 186:23 187:13 options (5) 7:22,23 8:3 188:11 197:8 order (28) 12:10 38:13 46:19 52:21 53:19 102:13 119:2 139:12 160:7	170:11 212:2,12 213:7,8,10,11,14 214:11,14,15,21,24 215:4,5,6,12,14,17 ordinarily (2) 31:19 46:22 organization (5) 18:14 20:21 51:3 61:4 144:24 organizations (6) 42:11,24 60:14 78:12 78:14 124:7 organized (2) 8:10 87:8 original (5) 65:9,14 114:20 121:13 201:8 originally (1) 168:17 origins (1) 94:24 OTC (6) 45:5 200:10,15,21 201:6,20 outcome (5) 10:4,6 122:17 204:16 225:18 outcomes (2) 68:17 183:13 outgrowth (1) 197:8 outset (1) 95:25 outside (3) 18:22 133:10 134:24 outstanding (3) 17:24 145:18 174:21 overrode (1) 192:12 over-the-counter (1) 8:8 owed (1) 191:24 owned (2) 157:6 171:20 ownership (2) 160:2,3 owns (1) 160:6 o'clock (5) 50:9 142:15 143:13 143:13,13 <hr/> P <hr/> P (1) 4:16 page (42) 25:5 55:24 56:5 59:13
---	---	--	---	---

59:14 66:3 67:10 68:3 70:9,16,20,25 73:3 74:6,6,17,19 84:18 87:12,24 90:14 91:19 92:24 121:10,18 122:5 150:7 168:6 169:24 169:25 185:19 194:3 198:23,25 223:3 226:9,11,13 226:15,17,19,21 pages (1) 121:16 paid (4) 73:18 119:20,22 167:14 PAM (1) 86:24 paper (1) 70:6 paragraph (46) 6:24 21:3 23:18,20 24:9,19,21,22,23 25:2,3,6,8,12,18 32:23,25 33:6,11,16 34:18,25 46:25 55:13 56:5 58:12 64:10,11 65:7 66:8 66:10 74:14 88:25 92:25 113:16,19 114:6 115:10 121:19 122:4,19 155:21 161:2,5 168:7 194:4 paragraphs (1) 26:3 pardon (1) 219:9 parenthesis (1) 48:19 parenthetical (20) 27:6 28:24 29:8 30:13 31:11 32:11,16 49:3 50:2 54:13 91:20 114:10,12,17,18 115:8,14 116:4 117:18 118:3 Park (1) 4:6 parse (5) 79:3 83:15 115:23,24 198:3 parsing (5) 50:19 75:24 84:17 102:7 211:16 part (68) 12:10 15:20 16:6 18:22 20:17 22:13 30:23 31:5 35:15	37:23 41:5,16 44:13 46:8 47:11,21 51:25 52:19,21 53:21 57:5 58:9,13 59:22,23 72:14 79:10,17,18 79:22 99:7,18,25 100:22,24 103:8,17 118:5 121:10,12 123:7,8,19,20 124:25 125:17 131:24 143:9 144:9 157:10 158:7 159:8 161:4,6 167:15 175:9 182:9 191:11 192:21 197:3 200:21 201:7,21 208:7 216:18,20 217:11 221:15 participants (5) 127:19 129:4 145:22 149:12 207:21 participate (4) 22:22 126:23 128:18 158:20 participated (8) 21:18,20 22:21 57:20 127:4,13 129:22 165:22 participating (4) 14:7 129:10 133:7 198:9 particular (13) 35:17 56:18 73:18 82:2 95:15 165:6 166:11 176:19 182:3 203:5 206:24 212:21 213:2 particularly (7) 78:19 93:21 99:9 104:19 175:8 176:13 196:3 parties (19) 5:7 6:6 37:2 41:12 44:13 49:11 65:21 84:5 138:7 143:25 151:9,12 161:12 171:18 172:21 187:11 188:20,21 225:16 partner (3) 21:17 28:8 154:22 partners (31) 21:8,25 23:7,13,19,23 25:20,25 26:19,25 27:21 28:7,16 29:7 36:13 42:14 65:12 65:19 89:18,21,22 112:19 197:12,15 198:7,12,15 199:2,8	199:20 202:8 party (2) 14:9 218:19 passing (1) 90:6 pay (6) 96:15 119:18,24 178:23 180:2 191:24 paying (2) 15:15 119:24 payment (7) 130:5 150:14,15,16 176:15 178:15 180:8 payments (1) 180:19 pays (3) 118:24 119:9 120:3 pending (1) 70:15 people (27) 11:24 15:22 18:2 38:9 51:22 53:14 69:4 73:9,12 98:12 126:25 128:16 132:11 143:21 155:20 194:19,20 195:17 202:25 203:6,8 207:14 213:5 216:9 221:6 221:13,18 people's (2) 115:5 198:15 percent (2) 91:16 215:17 perception (1) 220:25 perfected (1) 50:22 perfectly (1) 104:15 perform (1) 174:10 performance (1) 15:11 performed (2) 123:17 191:19 period (3) 43:9,13 147:2 periodic (1) 119:11 permissible (3) 104:3 107:11 108:2 permitted (7) 52:20 94:6 102:11 105:16 106:7 110:12 167:2	person (9) 12:16 21:20 31:16 59:15,17 105:25 133:14 160:5 203:6 personal (3) 57:24 210:3,20 personally (3) 29:2,4 35:23 personnel (1) 183:19 persons (1) 128:6 perspective (6) 16:23 102:10 103:3 119:20 125:16 174:24 phone (6) 21:18 126:24 133:3 207:21 208:4 219:2 phrase (1) 93:6 Phrased (1) 199:17 pick (1) 115:25 picked (2) 116:4 117:18 picking (1) 162:6 picture (1) 178:7 piece (1) 70:6 PIM (7) 17:19 18:25 20:5,7,9 20:23 87:4 pipeline (4) 134:3 136:23 137:14 138:19 pipelines (1) 137:21 pipes (2) 131:20 139:21 place (3) 166:21 212:19 214:25 placeholder (1) 73:8 plain (1) 140:4 plan (2) 20:15 207:18 played (1) 123:9 Plaza (3) 2:10 4:6,13 please (2) 16:10 218:16 plumbing (2)	131:21 137:18 point (48) 14:10 17:17 50:9 51:13 57:19 60:24 61:11 66:7 69:2 75:3 80:12,14 83:19 84:7 86:21 97:5 105:24 108:19 115:6 121:21 122:11 124:8 130:8 131:8 133:18 135:15 136:20 138:2 139:3 140:2 144:2,11 151:16,22 158:17 163:8,19 169:3 173:11,15 174:12 177:3 205:20 209:7 216:11,23 217:17 217:19 pointing (1) 32:8 portfolio (1) 183:14 portion (8) 70:24 71:7,15,19,24 99:20 104:13 188:12 portions (1) 133:12 posed (1) 114:16 position (21) 25:19 51:22 124:6 140:14,16 141:22 142:10 151:16,20 152:19,23 171:23 176:19,20,22 177:7 179:3,10 191:6 193:22 203:18 positioned (1) 15:20 positions (37) 7:11,13,21,22 11:14 40:9,9,9 41:6,14 61:6,8 62:4 119:4 134:5 140:21 151:12 170:21 172:3,8 174:11,13 174:20 176:12,13 176:17 177:12,12 178:12 179:8 183:19 184:8,10 185:16 186:23 187:14 188:11 positive (1) 180:8 possibility (3) 141:20 204:9 208:18
---	--	--	--	---

<p>possible (8) 21:2 50:17,17 66:6 115:2 143:18 150:16 218:25</p> <p>possibly (4) 11:24 56:15 85:7 142:3</p> <p>postulate (1) 77:21</p> <p>potential (6) 10:11 68:17 122:17 175:10 178:7 204:17</p> <p>potentially (5) 40:11 61:13 125:15 131:10 190:25</p> <p>practicable (1) 94:7</p> <p>practice (1) 69:21</p> <p>preceded (1) 106:24</p> <p>precise (1) 116:16</p> <p>precisely (6) 86:12 95:6 106:22 138:16 171:2 201:25</p> <p>precision (1) 95:16</p> <p>precluded (1) 139:11</p> <p>precursor (1) 189:19</p> <p>predated (1) 214:23</p> <p>predecessor (1) 105:9</p> <p>prefer (3) 62:23,25 134:10</p> <p>preferred (1) 50:21</p> <p>preliminary (1) 182:16</p> <p>premise (4) 101:23 102:3 146:7 159:25</p> <p>prep (1) 22:9</p> <p>preparation (2) 197:16,19</p> <p>prepare (2) 197:12 198:6</p> <p>prepared (12) 12:13,14 27:23 34:21 36:2,3 38:14 63:9 107:3 131:9 154:14 154:16</p>	<p>preparing (5) 22:10,14 194:7 198:12,14</p> <p>prepurchase (1) 216:25</p> <p>present (4) 58:6 65:8 104:9 132:25</p> <p>presented (3) 19:9 46:3 139:9</p> <p>president (1) 194:19</p> <p>presiding (1) 16:19</p> <p>presumably (3) 120:18 159:7 173:22</p> <p>presupposes (1) 135:14</p> <p>pretty (4) 105:7 131:8 182:12 202:13</p> <p>prevent (1) 99:7</p> <p>prevented (3) 18:6,17 221:4</p> <p>previous (4) 10:18 71:3 118:20 181:6</p> <p>previously (11) 65:25 66:25 69:8 87:10 89:23 95:3 151:6,19 153:24 168:2 169:16</p> <p>pre-existing (1) 176:10</p> <p>price (1) 164:20</p> <p>primarily (2) 9:2 23:4</p> <p>principal (2) 9:21 141:17</p> <p>principally (2) 56:23 155:18</p> <p>principals (2) 57:13 141:18</p> <p>prior (11) 38:4 43:9 80:24 91:8 120:3 147:3,11 155:15 164:2 185:6 217:17</p> <p>privilege (3) 24:2 141:8 199:11</p> <p>privileged (5) 57:10 126:10 141:7 162:3 197:24</p> <p>privileges (1) 49:6</p> <p>privy (3)</p>	<p>57:15 72:15,18</p> <p>probably (11) 15:21 39:21 56:22 167:22 187:18 189:25 194:25 204:24 212:24 218:6 219:23</p> <p>problem (3) 103:2 120:19 136:6</p> <p>problems (2) 166:2 196:6</p> <p>procedural (1) 103:4</p> <p>proceed (1) 124:8</p> <p>proceeding (1) 69:4</p> <p>process (14) 12:9 22:13 56:11 136:9 138:18 140:22 146:8,25 147:8,23,25 161:6 182:23 208:22</p> <p>processed (4) 30:22 157:4,6,22</p> <p>processing (7) 136:21 137:13 139:13 143:7,8 145:24 168:15</p> <p>produced (1) 66:20</p> <p>product (2) 24:3 171:10</p> <p>production (3) 54:25 55:6 66:18</p> <p>Professional (2) 2:12 225:7</p> <p>proffered (1) 37:18</p> <p>profit (3) 13:17 14:5,11</p> <p>profitable (1) 15:3</p> <p>progress (2) 106:22 135:20</p> <p>progression (1) 106:23</p> <p>prominent (1) 148:17</p> <p>prompted (4) 84:23 92:21 152:18 152:23</p> <p>properly (1) 51:23</p> <p>property (34) 27:7 30:14 31:11 33:14,20 38:11 46:21 48:13,18 50:3</p>	<p>50:6,24 54:14 56:2 56:8 74:22 75:4,10 83:9,10,10 85:16 97:2 99:13 100:9 102:17 109:6,8 114:8,12 116:7,24 117:17 118:2</p> <p>proposal (2) 106:6 111:14</p> <p>propose (2) 206:22,24</p> <p>proposed (12) 30:17 32:2 56:24 104:2 107:10,20 110:11 190:10 212:17 213:7,17,23</p> <p>proposing (1) 28:24</p> <p>proposition (1) 109:25</p> <p>proprietary (6) 40:8 60:9 116:25 117:11 137:3 157:2</p> <p>pros (1) 19:17</p> <p>prospect (2) 147:21 220:22</p> <p>protect (1) 178:25</p> <p>protected (1) 75:11</p> <p>protocol (2) 69:16 70:4</p> <p>prove (1) 201:18</p> <p>provide (8) 46:17 77:7 84:15 105:15 130:3 150:21 165:16 177:10</p> <p>provided (32) 12:7 20:13 26:14,23 27:3 31:22 36:4 48:12 49:3 72:11,22 80:2 90:10 91:21 92:16 110:4,16,19 111:16,22 112:6 122:7 158:3 164:12 165:9,12,17 183:18 206:16 207:2 216:15 220:5</p> <p>provides (2) 179:24 190:8</p> <p>providing (4) 49:16 158:10 161:13 220:3</p> <p>provision (28) 31:3 49:14,20 54:8 62:20 63:8 67:12,16</p>	<p>72:7,10,20 74:5 75:13 82:2 83:16 86:19 93:16 94:8,25 103:19,20 106:11 161:23 162:3 171:4 188:11 201:2,10</p> <p>provisions (30) 34:22 49:10 52:3,4,5 58:20 63:12 65:9 82:9,11 83:24 84:3 84:8 85:4 86:2 87:17 172:10 188:16,18,25 190:4 190:19 204:21 205:5,8 209:13 210:11 211:2,6</p> <p>public (3) 2:13 146:4 225:8</p> <p>purchase (8) 55:19,21 58:15 59:9 152:11 164:20 190:19 198:20</p> <p>purchased (11) 49:23 75:2 76:19 79:17,18 81:24 82:5 82:9 83:22,24 84:9</p> <p>purchaser (3) 81:12 85:11 91:21</p> <p>purportedly (1) 204:5</p> <p>purpose (13) 51:6,25 73:8 75:5 92:3 108:22 114:25 132:18 143:20 145:15 146:7 193:21 198:5</p> <p>pursuant (2) 6:21 83:6</p> <p>purview (1) 132:7</p> <p>put (16) 32:5,24 54:21 58:12 73:9,19 96:19 114:17 166:4 170:11 178:13 211:12 214:25 218:13 220:18 221:22</p> <p>putting (2) 50:2 73:8</p> <p>p.m (4) 193:17 219:8,9 222:18</p>
---	--	--	---	---

Q

quantification (1)
97:11

quantitative (2)
153:8,8

question (78) 5:11 8:3 13:8 22:7 23:10 24:7 25:3 30:4,16 33:8 35:18 42:13,19 44:15 49:4 49:7 50:5 68:14 70:14 77:14 78:18 81:2 84:2 85:24 89:19,22 90:3 93:18 93:25 94:5,9 97:19 97:25 98:20 100:19 101:10 102:3 105:11 107:14,16 116:9 118:20 122:3 126:9 135:3,4,14 141:9,12 156:10,15 162:11 163:2 168:12 170:24,25 171:6,12 173:14 174:7 176:16 181:9 181:18 185:5 186:20 187:18 188:17 189:2,3,6 197:23 199:5 203:5 209:5 210:6 214:17 216:22 219:18	raised (16) 44:11,15 53:13 93:17 94:5,9 98:20 103:24 105:11 107:4,17 108:13,14 115:4 120:19 185:5 raises (1) 181:10 raising (3) 97:24 185:10 190:3 Randall (3) 9:17 13:24 17:21 range (1) 68:17 rapid (1) 135:20 reach (3) 128:5 136:8 151:9 reached (8) 11:18 112:10 142:10 146:23 147:20 154:9 186:6 195:15 reaching (1) 147:3 reaction (2) 50:15 110:24 read (4) 87:17,17 88:13 170:10 readily (3) 102:13 104:22,23 reading (3) 180:13 200:25 202:5 reads (1) 114:12 ready (5) 90:2 113:5 117:22 221:23,25 realize (1) 160:9 realized (3) 49:15 139:20 221:18 really (18) 72:21 87:24 103:4 115:17 121:5 129:20 130:15,20 131:4 135:11,14 151:3 161:5 183:12 187:8 214:13 215:24 220:16 Realtime (2) 2:12 225:7 reason (18) 87:23 92:17 94:11 99:21 108:2 114:19 139:11 169:8 179:8 191:18 226:6,9,11 226:13,15,17,19,21 reasons (3)	115:4,5 136:4 recall (129) 11:22 12:6,11 13:3,13 13:21,23 14:7,15 16:2 17:12,14 19:3 19:19 22:19 26:11 26:24,25 27:18 28:10 29:23 30:24 35:18 37:10 39:17 40:3,22,25 41:9,24 42:22 43:13,25 51:19 52:18 56:18 62:22 63:16 66:5,14 69:11 86:12 87:22 89:22 92:23 95:5,6 95:11,16,20 97:17 98:5,8 105:4 110:9 110:23 118:11 122:6,14 124:16 127:8,9,11,13,20,21 127:23,24 128:6 129:20,24 130:15 130:24 131:2,11,14 131:17 132:13,16 133:25 140:12 143:3,14,17 144:5,6 144:9,17 145:2,6,20 148:5,13,19 149:3 149:13,21,22 150:5 152:13,20,20 154:13 155:2,9,24 165:8 166:24 169:3 172:25 184:15 190:15 192:25 198:9,19 202:22,23 205:9,10 207:20,24 207:25 218:2,4,25 219:16,19 220:3,16 recalled (1) 36:9 receive (2) 120:12 145:23 received (17) 31:16 37:18 120:2 121:2 134:8 141:25 153:25 156:3,12 162:5 173:8 175:16 179:20 180:16 181:5 183:21 206:11 receiving (2) 119:23 154:19 recess (7) 53:7 54:20 113:11 141:11 167:24 196:16 215:9 recognition (1) 123:6 recognize (1)	66:2 recollection (76) 8:14 21:7,25 22:3 23:7,19,22 26:18,19 26:21,22 27:16 28:6 28:11,12 29:10,11 42:13 72:7 89:10 90:24 91:13,17 93:14 94:4,24 104:5 104:10,15 106:4,22 107:5 108:19 111:24 112:21 120:14 127:7,14,17 129:18,19 131:5 133:16 139:24 142:4 144:19 148:10,12,20 149:14 152:16,16 153:18 154:6,8 165:20,24 169:5,13 169:22 187:16 192:24 193:3 194:18 195:11,23 197:12 208:2 214:6 214:19 215:25 217:10,21 219:4 220:7,12 recollections (7) 22:7,11,12 23:11,16 198:6,15 record (14) 15:16 22:6 25:11 54:22 88:23 121:8 170:13 175:19 208:24 214:9 215:7 215:10 225:13 226:7 records (3) 16:5 17:5 60:11 recourse (5) 101:22 125:4 151:21 164:19 167:12 recover (1) 207:6 Reed (2) 4:4 6:11 refer (18) 21:7 24:9,15,15,24 32:23 34:17 59:13 64:11 65:6 70:15 88:9 113:19 114:2,6 119:9 201:2 213:11 reference (26) 24:22 25:9,15 33:4 40:14 45:17 64:14 65:17 66:12 70:9 73:5 75:4,20 90:15 91:9,11 93:3 142:25 143:4 154:4 164:23	172:15 177:5 200:14,15 213:18 references (1) 146:11 referred (15) 42:15 43:2,24 55:14 73:25 82:25 83:18 120:9 123:22 149:20 188:6 203:22 215:12,14 220:17 referring (23) 9:8 21:9 24:19,25 25:7 39:24 44:19 47:6 59:16 60:23 64:18 65:20 80:23 97:22 119:10 126:16 165:4 185:9 197:7 201:9 211:22 214:13 219:14 refers (9) 67:12 68:4 73:4 75:17 93:6 167:8,9 189:5 215:4 reflect (4) 60:9,10 107:3 149:19 reflected (15) 16:5 22:8 57:2 58:19 81:21 110:17 112:10 115:22 123:16 158:4,5 167:10 192:12 201:8 211:5 reflecting (1) 82:17 reflects (1) 164:20 refresh (7) 153:17 154:6,8 187:16 193:2 195:11 214:19 refused (1) 151:19 refusing (1) 191:24 regard (2) 186:11 204:7 regarded (4) 132:4 176:24 200:10 221:22 regarding (12) 14:3 16:3 18:20 43:5 52:5 120:17 154:22 189:14 190:23 202:20 210:13 219:3 regardless (3) 101:3 170:20 172:2 regime (4)
R				
R (1) 4:8				
raise (2) 109:15 163:2				

<p>9:24 10:19,24 12:10 registered (6) 2:11 9:22 19:13,23,24 225:6 registration (1) 19:15 regulated (1) 8:22 regulators (4) 8:23 9:10 15:25 16:3 regulatory (5) 9:23 10:10,19 19:11 101:21 reiterated (1) 131:6 reject (2) 101:23 102:19 relate (1) 84:8 related (9) 9:21 17:17 45:15 59:6 146:11 167:17 196:20 197:2 225:16 relates (3) 82:21 83:12,12 relating (12) 8:21 17:22 37:20,21 43:17 65:2 72:8 104:20 150:23 172:11 200:10 209:3 relation (5) 48:7 49:24 59:3 150:9 179:12 relations (1) 146:4 relatively (1) 196:8 relevant (9) 40:13 49:14 186:4,25 190:7 191:19 206:4 206:5 212:13 relief (1) 17:21 relinquish (1) 58:21 reluctance (2) 130:2 140:3 remain (1) 10:18 remained (1) 191:14 remaining (4) 101:4 103:23 160:20 168:16 remember (42) 16:13,23,25 17:6,25</p>	<p>17:25 18:8 19:5,7 21:18 23:13,14 29:22 38:22 40:16 40:20 43:23 65:13 86:25 89:17 91:2 105:20,22,22 114:9 125:22,23 128:22 130:13,18 148:23 154:11 176:20 182:21 195:12 197:18 201:22,25 202:25 203:5 205:12 222:9 remembered (2) 23:8 65:18 Remind (1) 14:2 removal (11) 24:10,24 26:2 34:17 35:24 37:12 46:14 84:24 85:2 88:21 89:11 remove (1) 35:3 removed (12) 24:13 34:25 35:4 44:20 70:10 84:21 88:11,11,16 89:10 114:6 115:15 removes (1) 88:8 repeat (8) 25:3 33:7 107:14 122:2 147:10 156:10 173:14 210:5 repeatedly (1) 43:4 repeating (1) 135:3 replace (1) 181:19 replaced (1) 88:11 replacement (1) 203:23 repo (18) 18:7,25 202:21 203:8 203:15,20,21 204:3 204:4,8 205:23 207:7 208:10,19,23 209:16,19 210:13 report (4) 126:2,13 141:16,24 reported (4) 1:16 95:12 126:8 132:11 reporter (5) 2:12,13 16:11 225:7,8</p>	<p>reporting (2) 126:4 143:20 repos (1) 17:24 represent (2) 6:12 88:7 representation (4) 34:8 95:7 96:20 147:5 representative (1) 198:8 representatives (18) 18:13 38:25 39:16 127:2 164:24 166:5 195:6 207:22,23 208:8,16 209:12,13 210:9,11 213:5 214:3,4 represented (6) 39:4 93:22 101:15 185:15 186:23 187:13 representing (6) 29:14 88:10,16,17,19 130:5 repurchase (9) 204:3,14 206:4,6 209:2,6 216:12,16 217:6 request (5) 17:23 18:3 63:22 90:8 158:3 requested (1) 218:21 require (1) 188:15 required (5) 11:3 60:10 93:23 100:21 175:7 requirement (3) 18:16 174:24 175:3 requirements (2) 9:24 19:2 reservation (1) 207:15 reserve (15) 9:14 83:12 93:24 96:4 97:13,14 98:4,7,21 99:15 101:8 103:18 108:3 110:2,21 reserved (1) 5:11 residual (1) 157:8 resolution (4) 31:6 135:21 136:8 145:15 resolve (1) 132:19</p>	<p>resolved (9) 98:12 104:2 105:24 107:9,20,23 123:12 145:14 151:9 respect (23) 22:17 31:13 37:4 39:7 46:20 58:3,18 59:5 78:8 98:19 103:25 118:7 122:4 133:20 135:15 143:6 152:7 169:24 176:12 182:5 186:7 189:4 202:21 respective (2) 5:6 177:15 respond (1) 81:4 responded (3) 137:9 209:19,20 responding (3) 97:18 185:6 193:19 responds (1) 185:19 response (13) 26:12 37:6 49:19 93:25 120:12,15 138:23 140:8,13 143:4 187:3 194:10 202:17 responsibilities (2) 123:4 159:14 responsibility (8) 62:3 76:3 124:10 160:2 174:10 177:18 187:2 189:15 responsible (18) 12:17 60:20,22 68:23 75:24 76:8,17 77:10 78:4,6 79:9,21 81:12,16 82:23 191:15 192:16 221:24 responsive (1) 63:22 rest (1) 87:14 result (8) 12:2 94:19 101:7 102:21,22 119:15 137:4 186:13 resulted (1) 101:24 results (3) 127:23 144:3,22 resurrect (1) 115:3 return (2) 91:23 162:21</p>	<p>reveal (1) 171:9 reversed (1) 210:4 review (7) 89:25 125:10 155:22 168:19 169:2,3 206:5 reviewed (1) 105:10 reviewing (1) 165:23 revised (3) 32:6 37:18 164:18 re-pose (1) 77:15 Ricci (1) 57:22 Rich (1) 57:22 right (21) 33:2,6,9 71:7 73:23 75:22 76:23 77:22 88:21 89:4 98:12 107:11 121:20 139:24 158:9 180:4 189:24 191:3 194:2 214:23 216:7 rights (24) 18:4,7 68:18 84:4 172:8 192:4 203:11 203:14,20 204:7,18 205:18,21,23,24 206:3,21 207:4,6,9 207:15 208:9 212:23 216:10 risk (21) 15:6 140:20 144:25 153:5,9 169:12 176:7,9,11,18 177:17 178:4,9 179:5,9 183:9,11 192:17 204:15,17 206:14 risks (7) 11:15 144:16,18 151:14 153:2 177:15 222:7 ROBERT (3) 3:8,22 4:16 Rocks (5) 206:15,18,19,22 212:25 Rodefild (1) 125:24 role (2) 8:17 16:6 room (11) 129:12 133:4 148:18</p>
--	---	---	---	--

165:21 166:3,5,10 166:11,15,16 167:3 rooms (4) 106:20 165:21 166:12 166:23 Rosen (238) 1:12 2:8 6:1,3,5 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1 65:1 66:1,24 67:1 68:1 69:1 70:1 71:1 72:1 73:1 74:1 75:1 76:1 77:1 78:1 79:1 80:1 81:1 82:1 83:1 84:1 85:1 86:1 87:1 88:1 89:1 90:1 91:1 92:1 93:1 94:1 95:1 96:1 97:1 98:1 99:1 100:1 101:1 102:1 103:1 104:1 105:1 106:1 107:1 108:1 109:1 110:1 111:1 112:1 113:1 114:1 115:1 116:1 117:1 118:1 119:1 120:1 121:1 122:1 123:1 124:1 125:1 126:1 127:1 128:1 129:1 130:1 131:1 132:1 133:1 134:1 134:23 135:1 136:1 137:1 138:1 139:1 140:1 141:1 142:1 143:1 144:1 145:1 146:1 147:1 148:1 149:1 150:1 151:1 152:1 153:1 154:1 155:1 156:1 157:1 158:1 159:1 160:1 161:1 162:1 163:1 164:1 165:1 166:1 167:1 168:1 169:1 170:1 171:1 172:1 173:1 174:1 175:1 176:1 177:1 178:1 179:1 180:1 181:1 182:1 183:1 184:1	185:1 186:1 187:1 188:1 189:1 190:1 191:1 192:1 193:1 194:1 195:1 196:1 197:1,25 198:1 199:1 200:1 201:1 202:1 203:1 204:1 205:1 206:1 207:1 208:1 209:1 210:1 211:1,13 212:1 213:1 214:1 215:1 215:11 216:1 217:1 218:1,13 219:1 220:1 221:1 222:1 222:20,22 223:1,4,8 224:1 225:1,10 226:1,5,24 Rosen's (2) 164:17 167:7 round (1) 22:23 Roy (3) 9:17 13:24 17:21 RPR (2) 1:17 225:22 Rule (1) 6:22 rules (2) 158:19 210:4 run (2) 50:11 150:9 running (1) 135:24 <hr/> S <hr/> S (1) 4:15 Sachs (1) 221:12 sake (1) 48:24 sale (15) 52:21 53:5 59:3 86:24 99:19 209:3 213:7,7 213:11,14 214:14 214:23 215:17 217:12 218:3 Sandra (6) 206:15,17,18,19,22 212:24 sat (1) 50:21 satisfaction (1) 101:19 satisfactory (1) 183:6 satisfy (1) 100:15 Saturday (3)	39:13 136:24 181:6 saw (13) 34:12 35:9,22 44:18 66:6,14 89:16,19 95:5,21 177:10 183:17 184:11 saying (28) 41:13 52:18 61:25 76:6 91:3 95:10 107:24 112:16 130:14 131:3,11,15 131:18 132:13,16 132:17 137:24 144:7 145:2,6 147:24 148:6 152:14 168:18 191:25 196:8 204:15 205:16 says (17) 69:18 74:21,24 75:21 76:10 85:20 91:20 161:5,23 164:17 167:6 189:19 194:2 199:14,14 212:18 214:10 scenarios (1) 102:7 scheduled (1) 39:13 SCHILLER (1) 3:11 scope (3) 20:16 82:4 189:14 scribbled (1) 70:6 scroll (1) 64:10 sealing (1) 5:7 search (1) 54:23 searching (1) 198:14 SEC (34) 9:11,15 10:7 11:19 12:8,18 13:24 17:15 18:2,3,14,15 19:3 95:7,12 97:13 99:21 100:4 120:15 143:25 202:20,25 203:3,8,9,10 204:7 204:20,22 205:10 207:2 215:21 218:21 219:5 second (21) 6:23 23:20 33:17 36:15,16 55:15 68:6 68:7 73:3 78:7 107:4,8,16 108:7,12	108:19 118:19 161:4 169:24 181:18 214:22 section (21) 37:6 68:4,5 74:7,8,18 74:19 83:23,25 84:10,18,19 85:10 161:4,5 198:22 199:3 213:18,22,23 214:5 sections (1) 34:14 secure (9) 27:7 30:14 31:12 50:3 54:14 60:19 114:13 116:8 167:16 secured (1) 75:10 securities (39) 50:25 54:3,4 58:23 70:24 91:23 93:6,12 93:17 94:21,22 95:17 98:17,18 103:25 105:18 107:19 108:3,5,8,10 110:2,4,21 113:23 123:19 131:23 159:9 161:8 170:17 170:18,21 171:3 172:4,6 173:20 182:6,9 216:20 security (1) 160:6 see (82) 6:25 23:19,21 24:10 24:22 25:22 34:5,24 35:8 36:17 46:10 47:3 48:3,9,19 64:14 66:9,10,13 67:11,13,16 68:3,8 70:8,11,20,23,25 73:3,21,23 74:7,15 74:22,24 75:19 76:10,11 80:6,8 84:21 85:13 88:2,5 90:14,17 91:20,24 92:17,24 93:2 95:10 113:24 121:18 122:5,19 142:11 154:4 161:4,10 164:6,16 168:9 170:4 181:9 182:17 183:20 185:7,11 186:17 187:21 190:11 194:8,9 195:10 211:18 212:3,15 213:19 217:19 219:12 seeing (3)	69:11 87:22 89:11 seek (3) 212:4 215:2 216:7 seen (16) 27:9,22 66:20 67:2 69:13 89:14 90:4,5 95:3,14 168:3 169:19,21 211:15 213:7 218:17 selling (1) 159:12 sending (1) 114:23 sense (4) 40:17 112:6 142:5 163:18 sent (6) 185:2 193:12,15 211:17 215:25 217:20 sentence (15) 21:5 31:4,4 33:18 48:3 65:6 76:10 85:11 93:5 161:10 168:7,9 169:25 170:7,11 separate (2) 62:19 151:3 separately (5) 165:12 177:9 186:6 192:13 216:17 separating (1) 163:4 September (11) 8:15,16 118:13 121:3 168:8 181:7 185:3 188:7 212:23 214:25 219:8 sequence (3) 30:19 33:2 139:24 sequencing (1) 29:25 sequentially (1) 30:22 seriously (1) 222:2 services (1) 20:13 session (1) 104:25 set (13) 23:23 24:19 25:7 33:5 85:5 102:25 103:11 192:2 212:21 214:11 215:22 225:11,20 settled (1) 131:8 set-off (2)
---	---	---	---	---

204:19 206:2 Sharbeck (1) 212:10 share (6) 94:3 128:4 153:8 219:11,21,25 shared (4) 70:7 87:19 219:23 220:15 Shari (4) 135:18 136:7 143:11 143:18 SHEET (1) 226:2 Sheldon (3) 154:25 164:18 167:7 Shelly (4) 133:10 148:22,23 165:13 shoes (8) 17:24 61:18 77:14 78:13 174:9,18 202:20 203:24 short (4) 101:4 185:15 186:23 187:13 shorter (1) 115:25 shortfall (6) 96:23,25 99:12 100:7 101:25 177:21 show (17) 6:18 34:10 64:5 65:24 66:24 69:7 87:10,23 89:5,23 95:2 151:5 153:24 163:15 167:25 169:15 211:7 showed (5) 89:12 162:24 182:16 183:24 187:24 shown (4) 31:25 95:23 111:19 213:2 shut (1) 139:21 side (64) 7:14 12:16 26:8 27:2 27:3 28:23 29:3,5,7 29:17 30:23 31:15 31:15,16,21,25 35:24 36:14 37:9,11 38:2,17 44:6,10,15 44:23 45:11 46:3,14 56:14,25 58:3 62:11 69:4 72:21 87:20 103:11 104:22 108:17 109:2,3,13 109:24 110:25	128:2 129:3 149:16 154:13 158:12,22 158:23 188:25 195:19,19,22 198:16 207:12,13 209:11 210:8,10 213:4 214:2,4 sides (3) 64:13 151:13,14 sign (2) 194:23 195:16 signal (1) 152:2 signaled (2) 45:22 151:24 signatories (1) 46:11 signature (2) 164:3,5 signed (6) 5:17,19 50:13 65:22 186:4 194:2 significant (15) 15:6 94:12 116:19,19 116:20,22,23,24 119:7 176:3,25 177:5 178:8 179:9 183:11 significantly (1) 178:21 sign-off (1) 196:11 similar (8) 22:23 54:5 74:15 94:22 110:3,22 111:9,17 simple (1) 151:3 simply (5) 68:24 98:13 114:17 115:2 137:19 simultaneous (1) 30:21 simultaneously (1) 143:21 single (1) 41:23 singled (1) 44:16 singling (3) 40:21 41:21,24 SIPA (3) 4:5 6:13 215:5 SIPC (10) 194:20 204:10,12 205:7 207:3 212:2,8 213:23 214:20 215:4 sir (29)	6:20 24:9 25:24 26:18 48:3 55:12 66:8 67:2 80:4 83:17 87:14 89:25 95:4 113:13 141:12 150:7 151:7 153:25 155:21 161:2 168:6 169:20,23 170:6 173:9 187:25 196:17 199:19 202:9 sitting (8) 12:12 19:5 82:17 87:20 130:24 149:23 162:17 219:20 situation (6) 36:24 68:15 80:16 83:2 123:11 182:18 slightly (1) 154:24 small (1) 23:5 smile (3) 105:22 106:3 110:8 sold (5) 64:20 86:25 100:2 124:23 216:21 solve (1) 194:15 solved (1) 196:3 somebody (11) 21:14 28:4 42:15 79:15 91:7 103:25 107:25 108:18 183:2 195:3 219:19 soon (1) 94:6 sorry (29) 16:13 18:18 21:16 24:14,21,25 29:4 33:7,15 45:15 48:9 48:12 56:3 62:25 80:25 83:5,5 109:2 122:2 128:17 147:10 178:21 185:24 187:2 194:11 206:17 209:23 210:5,15 sort (25) 10:20 16:17,19 17:4 45:7 50:14 51:11 70:6 95:21 105:24 119:12 123:10 127:5 131:20,21 137:17 143:23 177:11,14 195:24 195:25 196:5 210:4	211:24 219:17 sought (1) 204:21 Sounds (1) 63:14 source (8) 13:6,14 72:10 92:4 94:17 108:23 126:19 222:11 SOUTHERN (1) 1:3 speak (5) 29:2,4 118:4 132:9 175:24 speaker (1) 148:17 speaking (4) 128:7 148:24 166:4 166:13 speaks (2) 112:15 187:4 special (1) 202:14 specialize (1) 6:24 specialty (1) 206:20 specific (41) 20:24 26:11 32:16 37:22 39:18 41:9,24 41:25 42:22 44:2 45:5,23 46:13 57:5 57:15 60:16 62:22 65:4 81:11 83:19 84:6 104:19 117:7 120:15 126:6 127:14,16,24 129:17 131:4,13 142:4 148:9,20 152:6 165:24 169:13,13,22 185:10 214:6 specifically (50) 11:2 15:10 24:12 26:25 28:10 30:10 31:10 33:24 37:5 39:17 40:21 41:21 42:15,16 43:2,14,24 43:25 44:6 45:10 47:14 56:17 57:18 58:3,9,21 59:5 74:20 80:7 81:2,25 82:2 96:3 98:6 112:4 140:12 143:3 144:5,17 145:7 149:22 152:14 154:17 155:24 166:13 169:4,9 174:4 203:2 219:17	specificity (1) 84:14 specifics (4) 16:24 127:9 130:15 130:18 specified (1) 74:25 speculate (2) 91:6 127:15 speculation (3) 72:4 78:22 92:13 spend (1) 195:2 spending (1) 19:19 spent (2) 20:2 190:2 spilled (1) 149:9 spoke (15) 9:11 18:3,19 29:7 95:24 136:7 202:18 203:6,6 208:12,20 209:18 210:9 214:3 219:3 spoken (3) 16:14,22 218:23 spokesperson (2) 152:17 209:18 square (2) 48:18,21 ss (1) 225:4 staff (1) 9:12 staking (1) 151:11 stamped (28) 118:14,16 120:22,23 149:25 150:2 173:3 173:5 179:15,17 180:24 181:2 184:21,23 193:7,9 211:9 218:10 223:9 223:11,13,15,17,19 223:21,23 224:4,6 standard (1) 208:13 Stanley (1) 221:12 start (2) 8:18 49:20 started (1) 182:23 starting (6) 8:19 33:13 55:25 56:4 56:5 121:9 starts (5)
---	---	--	--	---

56:7 84:19 114:8 168:8 169:25 state (8) 2:13 55:5 86:15 88:22 118:4 214:9 225:3,9 statement (7) 183:15,23 184:6,7,7 184:11 198:19 States (3) 1:2 61:9 160:6 statistical (1) 183:13 status (1) 10:10 stay (6) 17:3 156:8 204:22 212:4 214:25 216:7 staying (1) 156:20 stays (1) 214:11 Steen (1) 2:9 step (3) 17:23 174:9 216:18 stepped (4) 120:17 174:18 186:9 203:24 stepping (7) 61:18 77:13 78:13 174:10,21 175:11 202:20 steps (1) 52:15 STERN (1) 4:11 Steven (1) 212:10 STIPULATED (3) 5:5,9,15 stop (1) 77:16 Street (1) 3:6 structurally (1) 20:20 structured (1) 159:24 struggling (1) 17:3 subject (27) 7:5 9:18 10:18 15:23 32:17 35:2 36:21 43:21 51:7,17 58:10 61:13 68:16,21 94:11 113:16 114:20 118:2 145:7 146:19 157:23	158:14 159:12 189:22 196:5 200:3 200:4 subjects (3) 16:8,14 19:2 subparagraph (1) 198:24 Subscribed (1) 222:22 subsequent (2) 89:2 155:25 subset (1) 23:5 subsidiary (2) 19:22 124:7 substance (7) 57:11 126:10 135:18 140:9 147:9,13 168:14 substantial (4) 131:10 176:22 178:4 178:5 substantially (6) 93:7,13 110:21 111:9 111:17 168:16 subtle (1) 188:23 successor (1) 180:3 sufficient (3) 96:6,15 218:16 sufficiently (1) 212:13 suggest (3) 44:21 170:3 198:16 suggested (8) 44:15 72:20 94:2 118:24 119:3 145:13 175:17,22 suggesting (1) 44:23 suggestion (1) 18:15 suggests (1) 168:23 Suite (1) 3:13 summarize (1) 63:9 Sunday (32) 39:13 123:13 127:2,2 127:12 128:16,19 129:23 130:14 132:14 135:12 139:25 142:3,16 144:8 148:6,15 149:3,8 151:22,23 153:13 168:8,12 179:21,22 185:3	193:13,16 194:13 195:20 221:11 support (22) 11:21 13:7,11 41:4 45:24 46:21 61:12 120:17,20 123:20 125:6 130:20 135:23 139:4,8 140:18 148:3 150:12,21 152:9 167:13,17 suppose (1) 205:14 supposed (2) 135:10 182:12 sure (49) 8:2 14:24 18:2 23:9 25:4 26:24 49:13 53:2 63:21 67:3,15 68:13 69:15 72:9 74:2 81:3,20 86:3 86:15 87:16,21 92:4 92:14,15 94:17 101:17 108:6 125:15 128:3 129:7 131:5 141:10 147:16 148:8 162:12,23 170:15 175:18 181:22,25 182:2 195:21 197:18 205:13,13 207:24 208:3 209:17 214:12 surprise (4) 46:4,6 117:8 200:7 surviving (1) 10:9 37:19 sworn (5) 5:16,19 6:7 222:22 225:12 systems (4) 10:12,14,15,22 S&C (1) 7:15	19:18 32:22 53:3,20 62:14 64:7 71:17,19 71:24 72:8,12,13 80:9 89:24 112:24 112:25 113:4 121:15 130:17 135:16 140:20 144:21 145:8 153:4 162:21 163:6,18,22 167:23 177:6 179:4 188:9,13 189:25 196:14 205:20 216:8 218:15 taken (4) 52:15,22 163:5 176:25 takes (2) 62:20 147:16 talk (4) 25:5 26:7 28:22 205:9 talked (4) 23:10 196:17 220:20 220:22 talking (20) 15:10,12 22:2 25:16 30:10 41:16,20 43:8 55:14,23 56:6 58:9 75:14 77:25 133:15 137:11 182:14 203:21 205:19 208:25 talks (1) 182:15 tank (1) 178:20 team (17) 124:21 125:8,13,18 125:21 126:2,13,15 126:16,17,17,20,25 141:17,17,25 144:15 technically (1) 83:10 telephone (4) 128:18 151:15 166:14 216:9 tell (37) 6:19 7:3 16:8 20:9 21:8 22:4 31:14 48:5 60:2 63:11 64:17 71:23 84:23 92:2 93:9 97:9 105:4 109:22 110:5 114:2,16 123:25 129:3 141:2,13 144:6 148:25 150:7 172:12 174:7 183:23 194:12 204:11 208:4 212:5	212:7 218:16 teller (1) 19:24 telling (1) 137:19 tended (1) 154:12 tens (1) 177:6 tentative (7) 11:7,9,12,19,25 12:25 13:14 term (5) 15:4 38:6 172:17 203:23 207:17 terminate (1) 205:24 terminated (5) 216:13 217:2,5,7,11 termination (6) 204:18 208:10,19 209:15 210:13 217:18 terms (23) 12:6 14:19 48:16 50:12 64:19 65:22 71:14 76:15 88:23 89:7 94:8 116:3 118:20 146:17 157:3 179:7 183:24 190:8 205:22 206:13 207:9 211:24 213:21 testified (2) 6:7 98:11 testify (2) 22:14 198:7 testimony (14) 30:12 36:7 42:12 71:3 71:10 78:20 80:6,24 81:20 83:2 107:13 113:21 161:18 225:13 text (1) 85:15 Thank (3) 21:17 222:14,17 themes (1) 131:7 Theoretically (1) 222:5 thing (4) 41:16 132:22 136:3 152:6 things (19) 10:13 16:17,22 23:14 39:21 48:11 56:10 63:9 82:18 86:14,14 92:7 138:12 151:2
--	---	---	--	---

92:7 138:12 151:2 174:16 176:6 190:25 197:13 222:6 think (124) 11:23,23 15:2,4,18 17:2 21:22 22:6 32:19 37:16 38:24 38:25 39:12,20 42:6 42:18 44:13 46:5,8 46:16 50:8 51:6,9 52:6 53:15 56:10 62:16 63:14,25 69:3 69:3 71:21 72:10 73:7,8,16,17 74:16 76:16 80:19 81:19 83:15 84:16 85:2,24 88:8 92:5 94:20 95:14 96:17,18 98:5 99:4 102:16 104:12 110:14 112:15,17 113:2 115:16 123:13 124:8 126:8 126:11 129:23 131:5 132:8 137:23 139:3 142:9 146:17 146:21 147:19 149:19 153:14,22 155:18 159:2 161:20,25 162:2 163:12 167:9 168:18 170:22 171:11,12 172:9 179:4 181:22 182:11 183:10 186:4,25 187:6,23 188:2,10 189:11 191:18 193:3 194:14 195:13 196:5 198:20 199:23 200:25 205:7,24 207:8 208:20 210:17 212:7 213:6 214:20 214:23 216:3,10 219:23 221:5,6,7,10 221:21 thinking (3) 19:16 82:18 102:6 third (4) 107:25 108:7,13 161:19 Thompson (15) 133:9,17,24 137:9,19 138:9,21 140:9 142:20,25 144:7 147:13 148:6 152:4 152:14 thought (18)	20:7,7 37:23 46:18 50:23 51:12 54:15 95:9 111:15 115:22 135:24 136:16,18 150:14,15 167:18 194:20,25 three (4) 28:15 76:20 128:23 128:23 tight (1) 143:22 time (107) 5:12 6:16 8:18 14:23 15:7 16:21,21 18:21 19:19 20:2 27:11,12 27:13 30:9 32:6,12 32:13,14 35:20 36:20 38:3 43:9 44:3 49:21 50:9,11 50:13 53:9 54:18 59:9 66:21 67:24 68:10 69:2,18,23 77:4,5 80:16 82:14 82:19 86:9,10,15 87:15,18 89:24 95:21 98:5 109:18 113:6 114:22 115:20,23 116:11 121:21 122:15 127:12 129:8 135:9 135:15,24 139:3 143:4,22 144:21 147:2,4,11 149:7 152:25 154:12 155:23 156:2,12 161:19 162:4,13,23 163:12,21 165:25 167:23 170:19 176:25 177:3 178:17 180:15 182:20 184:3,4 185:25 188:10,13 189:6,21 190:2 195:2 202:10 215:19,20 216:24 219:8,9 221:20 222:14,18 times (2) 220:17,23 timing (6) 29:25 69:25 137:10 142:5 182:21 216:23 tired (1) 155:20 today (11) 27:25 113:21 116:10 153:23 162:18,25 196:17 202:17	219:20 220:17,23 told (18) 37:13 53:10 65:12,19 78:6 93:20 134:11 136:16,18,19 137:6 145:4,5 148:7 149:13 172:13 176:18 184:12 tonight (1) 194:5 top (9) 17:3 59:14 69:17 73:2 122:5 150:6 185:19 198:25 219:7 topic (5) 40:21 202:22 203:8 205:11 218:24 total (1) 15:14 town (1) 21:23 to'ing (1) 216:8 tracks (1) 168:5 traded (1) 41:14 trades (9) 137:14,22 145:10,19 146:14 147:8,17,23 147:25 trading (3) 20:23 197:5,9 traffic (3) 153:20 193:2 217:20 transaction (54) 7:5,25 8:13,22 14:17 14:21 15:2,19 16:4 16:6 19:9,17 46:22 99:8,18 100:3,23 104:17 120:18,20 123:7,9 134:14,18 134:21 135:7 136:18,22,24 139:13 143:9 145:9 145:14 147:7,15,22 149:17 150:18 167:15 168:21 177:20 183:8 193:25 194:4 203:13,23 204:2,3 204:14 209:2,3 217:5,12 221:20 transactions (18) 59:23 131:24 134:4,7 136:10,22 138:18 138:19 143:7 145:25 146:9,18,25 157:5,22 168:16	205:25 212:14 transcription (1) 226:8 transfer (43) 38:21 39:22 43:17 54:2 79:13 85:17 92:25 97:23 98:2,21 99:8,14,22 100:8,13 101:11,24 102:16 103:20 105:15 106:12 107:18,19 108:2 110:7,20 113:23 120:10 130:11 133:23 137:3,8 138:25 139:16 140:5 141:4 141:15 157:20 158:6 186:5 191:25 193:25 195:7 transferred (30) 38:15 41:6 42:8 43:19 51:19,23 59:24 75:9 75:15,18 76:2,5,7 77:2 79:19 82:22 98:25 100:24 103:7 103:8,17 134:4 139:19 157:3 159:7 181:11,14,17 182:12 186:10 transferring (5) 98:13 100:7 107:9 109:10 216:17 transfers (9) 39:15 85:16 131:23 132:20 137:14 139:14 143:8 146:20 158:18 transmittal (2) 37:8 90:5 transmitted (2) 69:23 184:16 transmitter (1) 213:24 transmitting (1) 195:12 treated (2) 78:16 82:3 treatment (6) 14:16,19 45:18,23 46:20 64:24 trial (1) 5:12 tried (1) 178:6 triggered (2) 141:3,14 troubleshooting (1) 104:19 true (2)	177:23 225:13 Trust (1) 68:12 trustee (11) 4:5 6:13 117:24,25 118:5,6,20 119:25 161:6,13 164:4 trustee's (3) 25:19 38:25 164:23 try (3) 16:10 49:5 139:15 trying (14) 16:13 19:19 29:22 50:16 62:10 65:15 70:17 125:13 142:10 149:18 162:12 174:16 197:18 212:19 Tuesday (4) 175:25 178:2 222:4,6 turn (11) 30:23 68:3 73:2 74:6 74:17 84:18 92:24 155:21 168:6 194:17 198:22 turnover (1) 112:11 two (16) 9:12 10:3,21 29:23 30:2,19 59:19 65:5 68:5 70:25 106:16 128:23 138:6 166:8 176:7 190:24 type (4) 8:3 46:23 111:14 205:21 t,he (1) 186:21
<hr/>				
U				
<hr/>				
ultimately (11) 10:21 18:9 19:25 57:14 70:7 114:10 123:17 137:5 174:14 177:16 211:2 ultimatum (2) 221:5,17 Um-hm (12) 23:21 48:4,20 64:16 68:8 71:2 113:25 121:17 163:25 164:7 168:10 185:8 unavailability (1) 123:18 unavailable (1) 102:17 unaware (1) 160:24				

uncertainty (2) 144:20 222:11	100:17	verify (1) 90:13	203:18 221:24	14:8 17:10 47:21 54:4
unclear (4) 6:15 22:6 29:25 60:25	undoubtedly (1) 130:16	verifying (2) 74:4 168:4	wanted (20) 49:13 71:6 73:9 87:23	87:13 110:3 125:15
uncleared (1) 137:21	unfolded (1) 9:5	version (1) 67:5	92:8 94:17 99:23	141:23 165:21
unconditional (1) 110:7	unfortunately (1) 88:6	versus (1) 22:8	138:23 148:2	179:7
uncreditworthy (1) 179:2	uniformly (1) 69:22	viable (1) 140:18	151:14 158:16,19	whereof (1) 225:19
understand (41) 7:24 8:2 20:17 23:9	United (3) 1:2 61:9 160:6	Vic (2) 21:13 104:11	176:6 181:24	wide (1) 48:11
24:6 30:11 31:22	unprocessed (1) 146:14	view (10) 11:8 45:23 101:2	182:22 189:18	wider (1) 129:9
36:7 42:12 62:11	unrelated (3) 115:5 136:4 192:9	131:7 160:23,25	192:15 204:22	WILLIAM (1) 4:8
67:17 70:17 85:15	unsettled (5) 145:10,19 146:14	167:11 189:21,22	220:10 221:6	willing (6) 53:14 130:10 138:17
86:5,20 88:15 91:9	147:8,17	189:25	Washington (3) 3:14 21:15,17	144:12 152:4
98:3 107:24 117:5	unwinding (1) 216:16	viewed (1) 144:24	wasn't (21) 52:19,21 58:6 71:19	168:20
117:10 133:6,18	unwound (1) 204:3	visited (1) 125:8	72:6 76:14 92:16	winding (1) 155:22
137:10,24 139:25	update (1) 182:18	vis-a-vis (2) 189:12,13	99:6 102:6,6 104:16	Wisconsin (1) 3:13
156:2,18,22 160:22	URQUHART (1) 3:18	VIX (2) 176:22 179:3	105:13 109:3 125:2	withdrawn (1) 209:9
162:5,12,20 164:22	use (3) 86:18 113:2 166:23	voice (1) 16:11	178:23,23 182:25	witness (34) 3:12 4:12 6:6 24:5
171:17,21 172:21	usually (1) 12:9	volatile (2) 177:4 222:10	191:20,23 203:19	26:9 55:8 78:20
177:14 180:7 187:6	utterly (1) 192:8	volatility (3) 177:3 178:2,5	221:23	80:23 89:5 165:4
189:18	U.S (1) 77:20		way (24) 22:14,15 40:15 46:22	166:7 170:12,23
understanding (49) 7:16,20 8:7,9 11:11			49:18 69:24 75:21	174:2 180:5 184:2,5
11:18 12:4 15:9			82:24 109:16	187:23 188:4 192:6
29:10 55:17,20			112:25 114:25	193:14 199:4,10,17
56:25 63:4 67:24			146:24 147:22	201:11,15 214:8
68:9 71:4 78:15			158:17 177:13	215:6 222:17 223:3
82:14 90:20 92:9			178:17 180:17	225:10,14,19 226:5
106:9 109:23			192:3 199:17 208:5	word (5) 31:3 43:2 53:7 90:18
116:17 117:17			215:11,13 221:22	211:16
133:8 134:13,17			225:17	wording (2) 74:15 115:24
137:12,17 139:6			ways (1) 34:22	words (31) 30:13 34:20 48:22
143:5 152:22 153:2			Wednesday (1) 214:24	49:2,22 50:6,19
156:11,25 157:12			wee (1) 149:10	54:12 59:16 74:3
157:15,21 160:19			week (4) 22:18 23:3,4 215:20	81:7,8 93:9,11,12
162:14 170:6,16			weekend (6) 27:22 38:4 43:9,13	96:19 104:3 111:5,9
171:24 188:19,20			175:16 221:10	111:10,13,17 112:5
199:12 201:16			Weil (28) 55:6,9 90:10 97:18	112:7 115:13 116:6
204:11,16			109:24 110:16,18	131:13 140:9 147:9
understandings (1) 44:25			111:8,12,16,25	147:13 168:14
understood (19) 16:19 49:11 67:20			112:3,13 113:14	wordsmithing (1) 49:20
71:4 76:25 80:16			117:16 118:21	work (3) 24:3 43:11 171:9
86:12,23 103:5			120:2 165:3,9,19	working (3) 160:11 166:2,6
159:18 161:15			166:6 167:2 208:8	work-around (1) 138:16
163:13 178:9			208:17 219:25	world (1) 78:12
180:15,17,19 183:2			220:4,6,15	worried (2)
187:12 216:4			Weil's (1) 133:4	
undertaken (1) 204:24			Wells (2) 53:21 54:7	
undertaking (4) 12:6,7,13 189:15			went (2) 19:8 53:7	
undertakings (1) 190:20			weren't (10)	
under-reserved (1)				

135:23 221:14 worth (1) 214:9 wouldn't (19) 14:25 51:24 52:20 83:8 91:6 96:22,25 97:7,7,7 117:8 126:3 134:17 177:20 192:8 212:4 216:6,7 221:16 wound (1) 213:13 wrap (1) 53:3 wrong (3) 106:4,5 152:15 wrote (1) 65:16 <hr/> X x (2) 1:4,10 <hr/> Y Yeah (12) 26:9 91:25 96:17 103:16 137:23 139:22 166:9 174:6 181:16 206:25 207:16 218:22 yesterday (1) 23:5 York (17) 1:3,13,13 2:10,11,14 3:7,7,21,21 4:7,7,14 4:14 225:3,5,9 <hr/> 0 00024097 (2) 173:6 223:16 00034491 (1) 179:15 00126 (3) 120:22,24 223:12 00163813 (1) 218:15 00198 (3) 120:22,24 223:12 00201894 (1) 211:14 0024097 (1) 173:3 0034491 (2) 179:18 223:18 00359 (3) 149:25 150:3 223:14 0036408 (1) 180:24	0036472 (3) 184:21,24 223:22 0036482 (3) 193:7,10 223:24 074 (3) 91:9,13,16 08-13555(JMP) (1) 1:7 <hr/> 1 1 (20) 54:6 70:20 83:23,25 84:10 90:14 91:19 103:16 122:4 155:21 161:2,4,5 173:12,16,25 181:15 188:3 198:21 226:7 1D (3) 25:10 26:17 30:6 1(a)(ii)(C) (1) 37:6 1.1 (1) 198:22 1.7 (1) 98:4 100 (2) 91:16 215:17 10004-1482 (1) 4:7 10006 (1) 4:14 10010 (1) 3:21 10017-6702 (1) 3:7 11 (3) 1:6 66:8 142:15 120 (1) 223:9 122 (1) 223:11 14th (1) 8:15 15c3 (7) 51:18 53:22 54:3 76:22 77:2 93:3 95:18 15c3-3 (9) 31:2 36:23 37:20 45:18 52:6 58:24 75:20 83:7 101:20 15th (4) 8:15,19,20 43:12 152 (1) 223:13 156B (1) 169:16	163813 (2) 218:11 224:7 17th (1) 214:24 175 (2) 121:16 223:15 176 (2) 121:18 122:5 178 (1) 121:15 18 (1) 219:8 180 (1) 121:10 181 (1) 223:17 183 (1) 223:19 186 (1) 223:21 19 (4) 1:14 2:5 118:13 226:4 19th (1) 225:20 195 (1) 223:23 <hr/> 2 2 (10) 55:24 56:5 59:13 74:17,19,19 87:24 122:19 198:23 226:7 20 (3) 121:3 181:7 188:7 20015 (1) 3:14 2008 (5) 118:14 121:3 188:7 212:23 219:8 2009 (1) 169:18 2010 (5) 1:14 2:5 222:23 225:20 226:4 201894 (2) 211:10 224:5 202 (1) 223:5 21 (2) 168:8 185:3 213 (1) 224:4 22nd (4) 3:20 9:6 217:14 220:22 220 (1) 224:6	222 (1) 3:6 24 (1) 212:23 25 (4) 63:15,17 187:21,24 250 (16) 130:4 138:4,6 139:7 141:21 142:7,14 144:11 150:13 151:21,25 152:11 152:12 153:6 164:19 168:21 252 (1) 181:19 28461 (1) 1:18 <hr/> 3 3 (8) 21:3 23:18,20 59:14 169:24,25 194:4 226:8 3-3 (7) 58:19 93:24 96:3 97:23 108:21 113:15,23 3:31 (1) 193:17 3:43 (1) 154:10 3:59 (1) 219:9 30 (1) 65:25 30(b)(6) (5) 6:22 22:2,8 23:12 210:2 34 (1) 205:7 36 (1) 66:25 361 (3) 149:25 150:3 223:14 36473 (3) 184:22,24 223:22 <hr/> 4 4 (14) 24:9,21,23 25:6,18 26:3 32:23 34:18 68:3 74:6 84:18 92:24 168:6 198:25 4:01 (1) 219:8 4:35 (1) 222:18 409 (3)	180:25 181:3 223:20 41st (1) 3:6 451 (1) 95:3 483 (3) 193:8,10 223:24 49 (1) 69:8 <hr/> 5 5 (26) 11:8,20 12:25 24:19 24:22 25:2,8,12 26:3 32:25 33:6,11 33:16 34:25 46:25 50:9 55:13 56:5 58:12 64:11 65:7 74:14 88:25 114:6 115:10 143:13 5.1 (1) 182:16 50 (2) 89:6,24 51 (1) 3:20 5301 (1) 3:13 559 (3) 213:19,22 214:5 563C (1) 168:2 <hr/> 6 6 (3) 50:9 169:18 223:4 60 (1) 91:22 606 (4) 151:6 153:25 155:7 161:3 607 (1) 163:16 616A (1) 87:11 622 (3) 6:2,19 223:8 623 (4) 118:13,16 120:13 223:9 624 (3) 120:21,23 223:11 625 (3) 149:24 150:2 223:13 626 (3) 173:3,5 223:15 627 (3) 179:15,17 223:17
---	---	--	---	---

628 (3) 180:24 181:2 223:19 629 (3) 184:21,23 223:21 630 (3) 193:7,9 223:23 631 (5) 211:9,13 215:15,22 224:4 632 (4) 218:9,10,14 224:6 <hr/> 7 <hr/> 7 (2) 113:16,19 700 (4) 98:16 118:15,17 223:10 769 (16) 93:16,22 94:21 98:16 98:21 100:8,14 101:5,13 105:18 107:9 108:8,9,21 109:10 110:20 <hr/> 8 <hr/> 8 (7) 68:4 74:7 84:18,19 92:25 143:13 223:8 8s (1) 68:5 800 (1) 3:13 815 (3) 218:11,15 224:7 895 (1) 211:14 <hr/> 9 <hr/> 9 (1) 143:13 9:35 (1) 2:6 92 (3) 179:16,18 223:18 927 (1) 182:6 95 (2) 211:10 224:5 99 (3) 173:4,6 223:16				
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EXHIBIT O

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yolanda.trottman@finra.org[yolanda.trottman@finra.org]
Cc: Burke, William T[wburke@lehman.com]; Stucchio, Anthony[astucchi@lehman.com]
From: Potenciano, Joel
Sent: Tue 9/16/2008 12:06:41 PM
Subject: FW: Reserve Formula as of 09/12/2008
Categories: urn:content-classes:message

[FINRA.Consolidated 15c3-3.091208.pdf](#)

Hi Yolanda and Tony,

Attached is the final Reserve Formula as of 09/12/2008. Please let us know if you have questions. Thanks!

With kind regards,
Joel K. Potenciano
LEHMAN BROTHERS
Telephone +1 (212) 320-6786
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>
> _____
> From: Potenciano, Joel
> Sent: Tuesday, September 16, 2008 12:02 PM
> To: Stanton, Brian
> Subject: Reserve Formula as of 09/12/2008
>
> <<FINRA.Consolidated 15c3-3.091208.pdf>>
>
> Brian,
>
> Per our request, attached is the final 9/12 calc. Please let me know
> if you have questions. Thanks!
>
> With kind regards,
> Joel K. Potenciano
> LEHMAN BROTHERS
> Telephone +1 (212) 320-6786
> Fax +1 (646) 885-9383
> Email joel.potenciano@lehman.com
>

LEHMAN BROTHERS INC.
CONSOLIDATED 15c3-3 RESERVE FORMULA
AS OF SEPTEMBER 12, 2008
(in 000's)

	<u>BD UNIT</u>	<u>GOVT UNIT</u>	<u>TOTAL</u>
<i>CREDITS:</i>			
<i>CUSTOMER CREDITS</i>	6,520,841	1,057,744	7,578,585
<i>CUSTOMER BANK LOAN</i>	660,564	-	660,564
<i>CUSTOMER STOCK LOAN</i>	857,412	218,912	1,076,324
<i>CUSTOMER FAIL TO RECEIVE</i>	1,062,994	201,900	1,264,894
<i>FIRM SHORT VS CUSTOMER LONG</i>	1,287,667	559,028	1,846,695
<i>CUSTOMER DIVIDENDS AND INTEREST</i>	5,034	-	5,034
<i>SECURITY COUNT DIFFERENCE</i>	-	-	-
<i>SUSPENSE ACCOUNT CREDITS AND SMV</i>	106,369	197,137	303,506
<i>AGED TRANSFER AND REORGANIZATION</i>	-	-	-
<i>OTHER</i>	<u>-</u>	<u>-</u>	<u>-</u>
<i>TOTAL CREDITS</i>	10,500,880	2,234,721	12,735,601
<i>DEBITS:</i>			
<i>CUSTOMER DEBITS</i>	3,710,783	1,006,026	4,716,809
<i>CUSTOMER STOCK BORROW</i>	1,325,861	341,498	1,667,359
<i>CUSTOMER FAIL TO DELIVER</i>	406,793	178,626	585,419
<i>CUSTOMER MARGIN WITH OCC</i>	657,782	-	657,782
<i>OTHER</i>	<u>-</u>	<u>-</u>	<u>-</u>
<i>AGGREGATE DEBITS</i>	6,101,219	1,526,150	7,627,369
<i>LESS 3% OF AGGREGATE DEBIT ITEMS</i>	<u>(183,037)</u>	<u>(45,785)</u>	<u>(228,822)</u>
<i>TOTAL DEBITS</i>	5,918,182	1,480,366	7,398,547
<i>EXCESS OF CREDITS OVER DEBITS</i>	4,582,698	754,356	5,337,053
<i>EXCESS OF DEBITS OVER CREDITS</i>	-	-	-
<i>ADJUSTED REGULATORY LOCK-UP</i>			<u>5,691,000</u>
Less: Accounts Funded By Treasury 9/15			(447,000)
<i>NET AMOUNT SEGREGATED</i>			<u>5,244,000</u>

LEHMAN BROTHERS INC.
CONSOLIDATED 15c3-3 PAIB RESERVE FORMULA
AS OF SEPTEMBER 12, 2008
(in 000's)

	<u><i>TOTAL</i></u>
<i>CREDITS:</i>	
<i>PAIB CREDITS</i>	<i>1,928,151</i>
<i>PAIB BANK LOAN</i>	<i>3,934</i>
<i>PAIB STOCK LOAN</i>	<i>388,700</i>
<i>PAIB FAIL TO RECEIVE</i>	<i>8,500</i>
<i>FIRM SHORT VS PAIB LONG</i>	<i>194,659</i>
<i>PAIB DIVIDENDS AND INTEREST</i>	<i>-</i>
<i>SECURITY COUNT DIFFERENCE</i>	<i>-</i>
<i>SUSPENSE ACCOUNT CREDITS AND SMV</i>	<i>-</i>
<i>AGED TRANSFER AND REORGANIZATION</i>	<i>-</i>
<i>OTHER</i>	<i>-</i>
<i>TOTAL CREDITS</i>	<i>2,523,944</i>
<i>DEBITS:</i>	
<i>PAIB DEBITS</i>	<i>1,420,683</i>
<i>PAIB STOCK BORROW</i>	<i>681,137</i>
<i>PAIB FAIL TO DELIVER</i>	<i>1,717</i>
<i>PAIB MARGIN WITH OCC</i>	<i>-</i>
<i>OTHER</i>	<i>-</i>
<i>AGGREGATE DEBITS</i>	<i>2,103,537</i>
<i>TOTAL DEBITS</i>	<i>2,103,537</i>
<i>EXCESS OF CREDITS OVER DEBITS</i>	<i>420,407</i>
<i>AMOUNT SEGREGATED</i>	<i>531,000</i>

LEHMAN BROTHERS INC.
CUSTOMER RESERVE FORMULA
BROKER DEALER UNIT
AS OF SEPTEMBER 12, 2008

(in 000's)

(ITS ONLY)

	09/12/08	09/05/08	VARIANCE
CUSTOMER CREDITS:			
Customer Accts (ITS,	1,643,317	1,497,870	145,447
Customer Accts	0	0	0
Securities Related Intercompany Payable:	189,086	181,077	8,009
Phlx Options Payables	0	0	0
NonReg Commodity Credits	433,709	0	433,709
Bank Overdrafts	0	0	0
Bank Overdrafts(Commodity)	13,779	28,144	(14,365)
Other	0	0	0
Total	2,279,890	1,707,091	572,800
			0
CUSTOMER BANK LOAN	0	0	0
CUSTOMER STOCK LOAN	0	0	0
CUSTOMER FAIL TO RECEIVE (ITS)	203,076	140,336	62,739
CUSTOMER FAIL TO RECEIVE	0	0	0
CUSTOMER BANK LOAN (OCC MARGIN)	0	0	0
CUSTOMER BANK LOAN (ITS-REPO)	293,844	21,838	272,006
FIRM SHORT VS. CUSTOMER LONG (ITS)	6,186	5,818	367
FIRM SHORT VS. CUSTOMER LONG	0	0	0
SUSPENSE CREDITS	0	0	0
TOTAL CREDITS	2,782,995	1,875,084	907,912
CUSTOMER DEBITS:			
Customer Accts (ITS,	1,259,787	508,324	751,463
Customer Accts	0	0	0
Philadelphia Options Cust. Receivables	0	0	0
Total	1,259,787	508,324	751,463
CUSTOMER MARGIN WITH OCC	0	0	0
CUSTOMER STOCK BORROW (ITS)	54,435	3,130	51,306
CUSTOMER STOCK BORROW	0	0	0
CUSTOMER FAIL TO DELIVER (ITS)	182,886	84,283	98,603
CUSTOMER FAIL TO DELIVER	0	0	0
AGGREGATE DEBITS	1,497,108	595,737	901,371
LESS 3% OF AGGREGATE DEBIT ITEMS	44,913	17,872	27,041
TOTAL DEBITS	1,452,195	577,865	874,330
EXCESS OF CREDITS OVER DEBITS	1,330,800	1,297,219	33,582

LEHMAN BROTHERS INC.
CUSTOMER RESERVE FORMULA
BROKER DEALER UNIT
AS OF SEPTEMBER 12, 2008

(in 000's)

(ADP ONLY)

	09/12/08	09/05/08	VARIANCE
CUSTOMER CREDITS:			
Customer Accts (ITS)	0	0	0
Customer Accts	4,170,706	3,970,526	200,180
OMNI Conv payable Acct:	0	0	0
Phlx Options Payables	0	0	0
NonReg Commodity Credits	0	0	0
Bank Overdrafts	70,244	52,177	18,067
Other	0	0	0
Total	4,240,951	4,022,704	218,247
CUSTOMER BANK LOAN	366,720	0	366,720
CUSTOMER STOCK LOAN	857,412	225,563	631,849
CUSTOMER FAIL TO RECEIVE (ITS)	0	0	0
CUSTOMER FAIL TO RECEIVE	859,918	166,254	693,664
CUSTOMER BANK LOAN (OCC MARGIN)	0	0	0
CUSTOMER BANK LOAN (ITS-REPO)	0	0	0
FIRM SHORT VS. CUSTOMER LONG (ITS)	0	0	0
FIRM SHORT VS. CUSTOMER LONG	1,281,481	448,890	832,591
CUSTOMER DIVIDEND & INTEREST	5,034	15,944	(10,911)
SUSPENSE CREDITS	106,369	97,453	8,916
OTHER	0	0	0
TOTAL CREDITS	7,717,884	4,976,807	2,741,077
CUSTOMER DEBITS:			
Customer Accts (ITS)	0	0	0
Customer Accts	2,450,996	2,092,314	358,682
Philadelphia Options Cust. Receivables	0	0	0
Total	2,450,996	2,092,314	358,682
CUSTOMER MARGIN WITH OCC	657,782	621,700	36,082
CUSTOMER STOCK BORROW (ITS)	0	0	0
CUSTOMER STOCK BORROW	1,271,426	581,598	689,828
CUSTOMER FAIL TO DELIVER (ITS)	0	0	0
CUSTOMER FAIL TO DELIVER	223,907	96,702	127,205
AGGREGATE DEBITS	4,604,111	3,392,313	1,211,798
LESS 3% OF AGGREGATE DEBIT ITEMS	138,123	101,769	36,354
TOTAL DEBITS	4,465,988	3,290,544	1,175,444
EXCESS OF DEBITS OVER CREDITS	0	0	0
EXCESS OF CREDITS OVER DEBITS	3,251,896	1,686,263	1,565,634

LEHMAN BROTHERS INC.
CUSTOMER RESERVE FORMULA
BROKER DEALER UNIT
AS OF SEPTEMBER 12, 2008

(in 000's)

(COMBINED)

	09/12/08	09/05/08	VARIANCE
CUSTOMER CREDITS:			
Customer Accts (ITS)	1,643,317	1,497,870	145,447
Customer Accts	4,170,706	3,970,526	200,180
Securities Related Intercompany Payable:	189,086	181,077	8,009
Phlx Options Payables	0	0	0
NonReg Commodity Credits	433,709	0	433,709
Bank Overdrafts	70,244	52,177	18,067
Bank Overdrafts (Commodity)	13,779	28,144	(14,365)
Other	0	0	0
Total	6,520,841	5,729,794	791,047
CUSTOMER BANK LOAN	366,720	0	366,720
CUSTOMER STOCK LOAN	857,412	225,563	631,849
CUSTOMER FAIL TO RECEIVE (ITS)	203,076	140,336	62,739
CUSTOMER FAIL TO RECEIVE	859,918	166,254	693,664
CUSTOMER BANK LOAN (OCC MARGIN)	0	0	0
CUSTOMER BANK LOAN (ITS-REPO)	293,844	21,838	272,006
FIRM SHORT VS. CUSTOMER LONG (ITS)	6,186	5,818	367
FIRM SHORT VS. CUSTOMER LONG	1,281,481	448,890	832,591
CUSTOMER DIVIDEND & INTEREST	5,034	15,944	(10,911)
SUSPENSE CREDITS	106,369	97,453	8,916
OTHER	0	0	0
TOTAL CREDITS	10,500,880	6,851,891	3,648,989
CUSTOMER DEBITS:			
Customer Accts (ITS)	1,259,787	508,324	751,463
Customer Accts	2,450,996	2,092,314	358,682
Philadelphia Options Cust. Receivables	0	0	0
Total	3,710,783	2,600,638	1,110,145
CUSTOMER MARGIN WITH OCC	657,782	621,700	36,082
CUSTOMER STOCK BORROW (ITS)	54,435	3,130	51,306
CUSTOMER STOCK BORROW	1,271,426	581,598	689,828
CUSTOMER FAIL TO DELIVER (ITS)	182,886	84,283	98,603
CUSTOMER FAIL TO DELIVER	223,907	96,702	127,205
AGGREGATE DEBITS	6,101,219	3,988,050	2,113,169
LESS 3% OF AGGREGATE DEBIT ITEMS	183,037	119,642	63,395
TOTAL DEBITS	5,918,182	3,868,408	2,049,774
EXCESS OF CREDITS OVER DEBITS	4,582,698	2,983,482	1,599,215
EXCESS OF DEBITS OVER CREDITS	0	0	0

LEHMAN BROTHERS INC.
RULE 15c3-3 RESERVE FORMULA
(000'S)

AS OF SEPTEMBER 12, 2008

09/12/08

CUSTOMER CREDITS:

Customer Accounts	1,581,447
Securities Related Intercompany Payables	189,086
ITS Unsecured Shorts	61,870
Non Commodity Reg	433,709
Commodity Overdrafts	13,779
Bank Overdrafts	0
Tefra Withholdings	0
Aged Checks	0
Subtotal	2,279,890

CUSTOMER STOCK LOAN	0
CUSTOMER FAIL TO RECEIVE	203,076
CUSTOMER BANK LOAN (OCC MARGIN)	0
CUSTOMER BANK LOAN (ITS-REPO)	293,844
FIRM SHORT VS. CUSTOMER LONG	6,186
SUSPENSE CREDITS	0

TOTAL CREDITS	2,782,995
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CUSTOMER DEBITS:

Customer Accounts	1,259,787
OMNI Rec Formula	0
Philadelphia Options Cust. Receivables	0
Subtotal	1,259,787

CUSTOMER MARGIN WITH OCC	0
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CUSTOMER STOCK BORROW	54,435
CUSTOMER FAIL TO DELIVER	182,886
AGGREGATE DEBITS	1,497,108
Less 3%	44,913
TOTAL DEBITS	1,452,195

EXCESS CREDITS OVER DEBITS	1,330,801
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15c3-3 CUSTOMER RESERVE COMPUTATION
BROKER DEALER UNIT
AS OF SEPTEMBER 12, 2008
(in 000'S)

	09/12/08
1. CUSTOMER CREDITS:	
CUSTOMER SECURITY ACCOUNTS	8,426,751
CUSTOMER ADJUSTMENTS	(2,763,246)
UNMAPPED CUSTOMER PAYABLE	3,707
CUSTOMER NETTING LBI (incl. 941-20159 & 941-20160)	(767,443)
CUSTOMER NETTING NB	(87,776)
MONEY CONTROL ADJUSTMENTS	-
NON-BROKER DEALER AFFILIATES TYPE 5	291
BOOKKEEPING ADJUSTMENTS	-
CUSTOMER ADJUSTMENTS VS. ADP OMNI (097-00084)	-
NON-NETWORK OFFSHR MUTUAL FUNDS	-
BANK OVERDRAFTS	70,244
NON-BROKER DEALER AFFILIATES - OTHER TYPES	183,000
HOUSE ACCOUNTS	512
TEFRA WITHHOLDING PAYABLE	187
LEGAL LEDGER CONTRA ACCOUNTS	115
BREAK VS. CUSTOMER LONG	115
FIRM LONG VS. CUSTOMER SHORT	(130,037)
NONCUST LONG VS. CUSTOMER SHORT	(716,611)
REVERSE REPO VS. CUSTOMER SHORT	-
PAIB LONG VS. CUSTOMER SHORT	(1,670)
SHORT & CREDIT INTEREST	20,788
MONEY FUND SETTLEMENTS 098-00003 & 098-70001	-
UNALLOCATED CUSTOMER SHORT	2,023
TOTAL CUSTOMER CREDITS	4,240,951
2. CUSTOMER BANK LOAN:	
OCC MARGIN	-
OCC MARGIN DEFICIT	-
OCC COMMINGLED MARGIN (NONCUST BANK LOAN)	-
STOCK BORROW VS. CUST BANK LOAN	35,113
STOCK BORROW VS. FIRM BANK LOAN	-
STOCK BORROW PLEDGE Q VS. FIRM BANK LOAN	-
STOCK BORROW PLEDGE NQ VS. FIRM BANK LOAN	-
STOCK BORROW L/C VS. FIRM BANK LOAN	-
FAIL TO DELIVER VS. FIRM BANK LOAN	-
CUSTOMER BANK LOAN VS. NON-CUST LONG	-
CUSTOMER LONG VS. CUSTOMER BANK LOAN	331,607
CUST BANK LOAN - CUST NOT LONG	-
NONCUST BANK LOAN - NONCUSTOMER NOT LONG	-
FIRM BANK LOAN - FIRM NOT LONG	-
TOTAL CUSTOMER BANK LOAN	366,720
3. CUSTOMER STOCK LOAN:	
STOCK LOAN	38,381,735
STOCK LOAN MTM	(2,540,921)
STOCK LOAN WITH CLEARING ORG	-
STOCK LOAN FREE OF MONEY	6,651,469
STOCK LOAN MTM DEFICIT	468
STOCK LOAN BOB ADJUSTMENT	-
UNALLOCATED STOCK LOAN ADJ	-
STOCK LOAN VS. STOCK BORROW L/C	-
STOCK LOAN PLEDGE VS. STOCK BORROW L/C	-
STOCK LOAN VS. REVERSE REPO	-
STOCK LOAN PLEDGE VS. REVERSE REPO	-
STOCK LOAN VS. PAIB LONG	(2,834)
STOCK LOAN PLEDGE VS. PAIB LONG	(385,866)
STOCK LOAN VS. STOCK BORROW	(29,303,462)
STOCK LOAN VS. STOCK BORROW PLEDGE Q	(250,604)
STOCK LOAN VS. STOCK BORROW PLEDGE NQ	(1,884,943)
STOCK LOAN PLEDGE VS. STOCK BORROW	(1,822,715)
STOCK LOAN PLEDGE VS. STOCK BORROW PLEDGE Q	(45,546)

through P to Declaration Pg 204 of 245

B63-3 CUSTOMER RESERVE COMPUTATION

*BROKER DEALER UNIT
AS OF SEPTEMBER 12, 2008
(in 000'S)*

	<u>09/12/08</u>
<i>STOCK LOAN PLEDGE V.S. STOCK BORROW PLEDGE NQ</i>	<i>(168,201)</i>
<i>STOCK LOAN V.S. NONCUSTOMER LONG</i>	<i>(1,751,845)</i>
<i>STOCK LOAN PLEDGE V.S. NONCUSTOMER LONG</i>	<i>(1,997,870)</i>
<i>STOCK LOAN V.S. FIRM LONG</i>	<i>(2,759,139)</i>
<i>STOCK LOAN PLEDGE V.S. FIRM LONG</i>	<u><i>(1,262,314)</i></u>
 <i>TOTAL CUSTOMER STOCK LOAN</i>	 857,412

SEC-3 CUSTOMER RESERVE COMPUTATION

BROKER DEALER UNIT
AS OF SEPTEMBER 12, 2008
(in 000'S)

	09/12/08
4. CUSTOMER FAIL TO RECEIVE:	
FAIL TO RECEIVE	2,124,866
CNS FAIL TO RECEIVE	174,581
MISC FAIL TO RECEIVE ADJUSTMENTS	-
OMNI FAIL TO RECEIVE ADJUSTMENTS	-
FAIL TO RECEIVE MTM ADJUSTMENT	-
FAIL TO RECEIVE ADJ. PAM MONEY MARKET FUND	319,376
FAIL TO RECEIVE VS. FAIL TO DELIVER	(164,495)
FAIL TO RECEIVE VS. REVERSE REPO	-
FAIL TO RECEIVE VS. MTM DEFICIT	-
FAIL TO RECEIVE VS. STOCK BORROW	(616,514)
FAIL TO RECEIVE VS. STOCK BORROW PLEDGE Q	(3,098)
FAIL TO RECEIVE VS. STOCK BORROW PLEDGE NQ	-
FAIL TO RECEIVE VS. STOCK BORROW L/C	-
FAIL TO RECEIVE VS. FAIL TO DELIVER CNS	(10,219)
FAIL TO RECEIVE VS. FIRM LONG	(257,236)
FAIL TO RECEIVE VS. NONCUSTOMER LONG	(547,505)
FAIL TO RECEIVE VS. PAIB LONG	(7,596)
FAIL TO RECEIVE VS. UNALLOCATED / BREAK	-
CNS FAIL TO RECEIVE VS. FIRM LONG	(57,078)
CNS FAIL TO RECEIVE VS. NONCUSTOMER LONG	(45,119)
CNS FAIL TO RECEIVE VS. PAIB LONG	(904)
CNS FAIL TO RECEIVE ADJUSTMENT	-
CNS FAIL TO RECEIVE VS. STOCK BORROW	(37,672)
CNS FAIL TO RECEIVE VS. STOCK BORROW PLEDGE Q	(1,248)
CNS FAIL TO RECEIVE VS. STOCK BORROW PLEDGE NQ	-
CNS FAIL TO RECEIVE VS. STOCK BORROW L/C	-
CNS FAIL TO RECEIVE VS. REVERSE REPO	-
CNS FAIL TO RECEIVE VS. FAIL TO DELIVER	(10,221)
TOTAL CUSTOMER FAIL TO RECEIVE	859,918
5. FIRM SHORT VS CUSTOMER LONG:	
TOTAL FIRM SHORT	-
FIRM OMNI SHORT	-
FIRM SHORT VS. CUSTOMER LONG	158,591
NONCUSTOMER SHORT VS. CUSTOMER LONG	457,358
REPO VS. CUSTOMER LONG	549,501
PAIB SHORT VS. CUSTOMER LONG	113,511
REPO VS. UNALLOCATED	142
FIRM SHORT VS. UNALLOCATED	515
NONCUSTOMER SHORT VS. UNALLOCATED	1,863
TOTAL FIRM SHORT VS. CUSTOMER LONG	1,281,481
6. CUSTOMER DIVIDEND & INTEREST:	
DIVIDEND & INT PAYABLES	8,242
ADJUSTMENTS FROM DIVIDEND DEPT.	(3,208)
TOTAL CUSTOMER DIVIDENDS & INTEREST	5,034
7. SECURITY COUNT DIFFERENCE > 7 DAYS:	
8. SUSPENSE ACCOUNTS	
SUSPENSE CREDITS & SMV:	8,093
CUSTOMER UNAPPLIED 090-01234	13,064
ABANDONED PROPERTY / SOFT DOLLARS / COMM. REBA:	85,212
TOTAL SUSPENSE ACCOUNTS	106,369
9. AGED TRANSFERS & REORGANIZATION:	
TRANSFER SHORTS OVER 40 DAYS	-
REORG/REDEMPTION SMV OVER 7 DAYS	-

through P to Declaration Pg 206 of 245

Bc3-3 CUSTOMER RESERVE COMPUTATION

BROKER DEALER UNIT
AS OF SEPTEMBER 12, 2008
(in 000'S)

		09/12/08
	TOTAL AGED TRANSFERS & REORGANIZATION	-
10.	OTHER:	
	OTHER CREDITS	-
	TOTAL OTHER	-
	TOTAL CREDITS	7,717,884

SEC-3 CUSTOMER RESERVE COMPUTATION

BROKER DEALER UNIT
AS OF SEPTEMBER 12, 2008
(in 000'S)

	09/12/08
12. CUSTOMER DEBITS:	
CUSTOMER SECURITY ACCOUNTS	4,039,364
CUSTOMER NETTING LBI (incl. 941-20159 & 941-20160)	(767,443)
CUSTOMER NETTING NB	(87,776)
MONEY CONTROL ADJUSTMENT	-
CUSTOMER ADJUSTMENT (VARIOUS and LBHI Debits)	-
CUSTOMER ADJUSTMENTS VS. ADP OMNI (097-00084)	-
BOOKKEEPING ADJUSTMENTS	-
INV ADVISORY FEES RELATED TO NB MARGIN DEBITS	-
MONEY FUND RECEIVABLE	(550,169)
MARGIN INTEREST	30,096
UNSECURED DEBITS	(1,210)
PARTLY SECURED DEBITS	(12)
NON-PURPOSE LOANS	(211,854)
RULE 144 UNSECURED DEBITS	-
SECURITY CONCENTRATION	-
TOTAL CUSTOMER DEBITS	2,450,996
13. CUSTOMER STOCK BORROW:	
STOCK BORROW	43,660,760
STOCK BORROW MTM	(1,309,085)
STOCK BORROW L.O.C.	114
STOCK BORROW VS. CUST SHORT ADJ.	-
STOCK BORROW FREE OF MONEY	8,524,833
STOCK BORROW LC VS. SECURED BK LOAN	-
STOCK BORROW LC VS. CUSTOMER SHORT	-
STOCK BORROW NQ VS. CUSTOMER SHORT	(5,871)
STOCK BORROW LC VS. FIRM BANK LOAN	-
STOCK BORROW NQ VS. FIRM BANK LOAN	-
STOCK BORROW VS. STOCK LOAN	(29,303,462)
STOCK BORROW VS. STOCK LOAN PLEDGE	(1,822,715)
STOCK BORROW PLEDGE Q VS. STOCK LOAN	(250,604)
STOCK BORROW PLEDGE NQ VS. STOCK LOAN	(1,884,943)
STOCK BORROW PLEDGE Q VS. STOCK LOAN PLEDGE	(45,546)
STOCK BORROW PLEDGE NQ VS. STOCK LOAN PLEDGE	(168,201)
STOCK BORROW LC VS. STOCK LOAN	-
STOCK BORROW LC VS. STOCK LOAN PLEDGE	-
STOCK BORROW LC VS. FIRM SHORT	-
STOCK BORROW LC VS. NONCUSTOMER SHORT	-
STOCK BORROW VS. FIRM SHORT	(5,471,070)
STOCK BORROW VS. NONCUSTOMER SHORT	(2,145,942)
STOCK BORROW PLEDGE Q VS. FIRM SHORT	(270,618)
STOCK BORROW PLEDGE Q VS. NONCUSTOMER SHORT	(158,018)
STOCK BORROW PLEDGE NQ VS. FIRM SHORT	(324,010)
STOCK BORROW PLEDGE NQ VS. NONCUSTOMER SHORT	(95,927)
STOCK BORROW VS. THE BOX	(1,645,436)
STOCK BORROW PLEDGE Q VS. THE BOX	(99,360)
STOCK BORROW PLEDGE NQ VS. THE BOX	(29,705)
STOCK BORROW LC VS. THE BOX	-
STOCK BORROW VS. FAIL REC CNS	(37,672)
STOCK BORROW PLEDGE Q VS. F/R CNS	(1,248)
STOCK BORROW PLEDGE NQ VS. F/R CNS	-
STOCK BORROW LC VS. F/R CNS	-
STOCK BORROW LC VS. REPO	-
STOCK BORROW VS. REPO	(4,306,900)
STOCK BORROW PLEDGE Q VS. REPO	(55,120)
STOCK BORROW PLEDGE NQ VS. REPO	(157,954)
STOCK BORROW VS. UNALLOCATED	-
STOCK BORROW PLEDGE Q VS. UNALLOCATED	(49)
STOCK BORROW PLEDGE NQ VS. UNALLOCATED	-
STOCK BORROW LC VS. UNALLOCATED	-
STOCK BORROW VS. PAIB SHORT	(676,933)
STOCK BORROW PLEDGE Q VS. PAIB SHORT	(4,204)
STOCK BORROW PLEDGE NQ VS. PAIB SHORT	(15,863)

through P to Declaration Pg 208 of 245

Bc3-3 CUSTOMER RESERVE COMPUTATION

*BROKER DEALER UNIT
AS OF SEPTEMBER 12, 2008
(in 000'S)*

	<u>09/12/08</u>
<i>STOCK BORROW L/C VS. PAIB SHORT</i>	-
<i>STOCK BORROW L/C VS. FAIL TO RECEIVE</i>	-
<i>STOCK BORROW VS. FAIL TO RECEIVE</i>	(616,514)
<i>STOCK BORROW PLEDGE Q. VS. FAIL TO RECEIVE</i>	(3,098)
<i>STOCK BORROW PLEDGE NQ. VS. FAIL TO RECEIVE</i>	<u>(8,213)</u>
 <i>TOTAL CUSTOMER STOCK BORROW</i>	 1,271,426

ISC-3 CUSTOMER RESERVE COMPUTATION

BROKER DEALER UNIT
AS OF SEPTEMBER 12, 2008
(in 000'S)

09/12/08

14.	CUSTOMER FAIL TO DELIVER:	
	FAIL TO DELIVER	856,445
	CNS FAIL TO DELIVER	243,203
	MISC FAIL TO RECEIVE ADJUSTMENTS	(11,225)
	OMNI FAIL TO RECEIVE ADJUSTMENTS	-
	FAIL TO DELIVER MTM ADJUSTMENT	-
	FAIL TO DELIVER ADJUSTMENT	-
	FAIL TO DELIVER VS. FAIL TO RECEIVE	(164,495)
	FAIL TO DELIVER VS. FAIL TO RECEIVE CNS	(10,221)
	FAIL TO DELIVER OVER 30 DAYS	(826)
	FAIL TO DELIVER VS. FIRM SHORT	(52,597)
	FAIL TO DELIVER VS. PAIB SHORT	(1,702)
	FAIL TO DELIVER VS. REPO	(38,000)
	FAIL TO DELIVER VS. THE BOX	(316,248)
	FAIL TO DELIVER VS. NON-CUSTOMER SHORT	(70,352)
	FAIL TO DELIVER VS. UNALLOCATED/ BREAK	(3,770)
	CNS FAIL TO DELIVER VS. FIRM SHORT	(63,175)
	CNS FAIL TO DELIVER VS. NONCUSTOMER SHORT	(5,215)
	CNS FAIL TO DELIVER VS. PAIB SHORT	(15)
	CNS FAIL TO DELIVER VS. THE BOX	(127,307)
	CNS FAIL TO DELIVER VS. REPO	(345)
	CNS FAIL TO DELIVER VS. CUSTOMER BANK LOAN	-
	CNS FAIL TO DELIVER VS. UNALLOC/BREAK	(28)
	CNS FAIL TO DELIVER VS. FAIL TO RECEIVE	(10,219)
	TOTAL CUSTOMER FAIL TO DELIVER	223,907
15.	CUSTOMER MARGIN WITH OCC	
	OCC MARGIN	-
	OCC PROPRIETARY QUALIFIED COLLATERAL	657,782
	OCC COMMINGLED MARGIN (CUST. BANK LOAN)	-
	TOTAL CUSTOMER MARGIN WITH OCC	657,782
16.	OTHER	
	OTHER CUSTOMER DEBITS	-
	TOTAL OTHER	-
17.	AGGREGATE DEBIT ITEMS	4,604,111
18.	LESS 3%	(138,123)
19.	TOTAL ISC-3 DEBITS	4,465,988
20.	EXCESS - DEBITS OVER CREDITS	-
21.	DEFICIT - CREDITS OVER DEBITS	(3,251,896)

*LEHMAN BROTHERS INC.
CUSTOMER RESERVE FORMULA
GOVERNMENT DEALER UNIT (MTS)
AS OF SEPTEMBER 12, 2008
(in 000's)*

	<u>09/12/08</u>
<i>CREDITS :</i>	
<i>CUSTOMER CREDITS</i>	1,057,744
<i>CUSTOMER BANK LOAN</i>	0
<i>CUSTOMER STOCK LOAN</i>	218,912
<i>CUSTOMER FAIL TO RECEIVE</i>	201,900
<i>FIRM SHORT VS CUSTOMER LONG</i>	559,028
<i>CUSTOMER DIVIDENDS AND INTEREST</i>	0
<i>SECURITY COUNT DIFFERENCE</i>	0
<i>SUSPENSE ACCOUNT CREDITS AND SMV</i>	197,137
<i>AGED TRANSFER AND REORGANIZATION</i>	0
<i>OTHER</i>	<u>0</u>
<i>TOTAL CREDITS</i>	2,234,721
<i>DEBITS:</i>	
<i>CUSTOMER DEBITS</i>	1,006,026
<i>CUSTOMER STOCK BORROW</i>	341,498

<i>CUSTOMER FAIL TO DELIVER</i>	178,626
<i>CUSTOMER MARGIN WITH OCC</i>	0
<i>OTHER</i>	<u>0</u>
<i>AGGREGATE DEBITS</i>	1,526,150
<i>LESS 3% OF AGGREGATE DEBIT ITEMS</i>	<u>45,785</u>
<i>TOTAL DEBITS</i>	1,480,365
<i>EXCESS OF CREDITS OVER DEBITS</i>	<u>754,356</u>

15c3-3 P.A.I.B COMPUTATION

BROKER DEALER UNIT

AS OF SEPTEMBER 12, 2008

(in 000'S)

09/12/08

1.	<i>P.A.I.B. CREDITS:</i>	
	<i>PAIB CREDITS</i>	2,359,791
	<i>BREAK VS. PAIB LONG</i>	-
	<i>PAIB CREDIT ADJ</i>	(47,500)
	<i>PAIB DEFERRED COMMISSIONS AND IA FEES</i>	12,638
	<i>PAIB LONG VS CUSTOMER SHORT</i>	1,670
	<i>FIRM LONG vs PAIB SHORT</i>	(7,891)
	<i>NONCUST LONG VS. PAIB SHORT</i>	(277,047)
	<i>UNALLOCATED PAIB SHORT</i>	-
	<i>PAIB SHORT VS CUSTOMER LONG</i>	(113,511)
		<hr/>
	<i>P.A.I.B. CREDITS:</i>	1,928,151
2.	<i>PAIB BANK LOAN:</i>	
	<i>OCC MARGIN</i>	-
	<i>OCC MARGIN DEFECIT</i>	-
	<i>PAIB LONG VS. FIRM BANK LOAN</i>	-
	<i>PAIB LONG VS. CUST BANK LOAN</i>	3,934
	<i>PAIB LONG VS. PAIB BANK LOAN</i>	-
	<i>PAIB BANK LOAN - PAIB NOT LONG</i>	-
	<i>CUST BANK LOAN- CUSTOMER NOT LONG</i>	-
	<i>FIRM BANK LOAN- CUSTOMER NOT LONG</i>	-
		<hr/>
	<i>TOTAL P.A.I.B. BANK LOAN</i>	3,934
3.	<i>PAIB STOCK LOAN:</i>	
	<i>STOCK LOAN VS PAIB LONG</i>	2,834
	<i>STOCK LN PLDG VS. PAIB LONG</i>	385,866
		<hr/>
	<i>TOTAL CUSTOMER STOCK LOAN</i>	388,700

15c3-3 P.A.I.B COMPUTATION

BROKER DEALER UNIT

AS OF SEPTEMBER 12, 2008

(in 000'S)

	09/12/08
4. PAIB FAIL TO RECEIVE:	
FAIL TO RECEIVE VS PAIB LONG	7,596
CNS FAIL TO RECEIVE VS PAIB LONG	904
TOTAL P.A.I.B. FAIL TO RECEIVE	8,500
5. FIRM SHORT VS PAIB LONG:	
REPO VS PAIB LONG	98,741
NONCUST SHORT VS. PAIB LONG	90,215
FIRM SHORT VS PAIB LONG	5,703
TOTAL FIRM SHORT VS P.A.I.B. LONG	194,659
6. PAIB DIVIDEND & INTEREST:	
STOCK DIVIDENDS > 30 DAYS	-
MONEY CONTROL ADJUSTMENT	-
DIVIDEND & INT PAYABLES > 7 DAYS	-
TOTAL P.A.I.B. DIVIDENDS & INTEREST	-
7. SECURITY COUNT DIFFERENCE > 7 DAYS:	-
8. SUSPENSE CREDITS & SMV > 7 DAYS:	-
9. AGED TRANSFERS & REORGANIZATION:	
TRANSFER SHORTS OVER 40 DAYS	-
REORG/REDEMPTION SMV OVER 7 DAYS	-
TOTAL AGED TRANSFERS & REORGANIZATION	-
10. OTHER:	
OTHER CREDITS	-
TOTAL OTHER	-
TOTAL PAIB CREDITS	2,523,944

15c3-3 P.A.I.B COMPUTATION

BROKER DEALER UNIT

AS OF SEPTEMBER 12, 2008

(in 000'S)

09/12/08

12. P.A.I.B. DEBITS:

<i>CUSTOMER SECURITY ACCOUNTS</i>	<i>1,647,478</i>
<i>VARIOUS PAIB DEBIT ADJ</i>	<i>(226,796)</i>
<i>UNSECURED DEBITS</i>	<i>-</i>
<i>PARTLY SECURED DEBITS</i>	<i>-</i>
<i>RULE 144 UNSECURED DEBITS</i>	<i>-</i>
<i>SECURITY CONCENTRATION</i>	<i>-</i>
<i>BREAK VS CUSTOMER LONG</i>	<i>-</i>
	<hr/>
<i>P.A.I.B. DEBITS:</i>	<i>1,420,683</i>

13. PAIB STOCK BORROW:

<i>STOCK BORROW VS PAIB SHORT</i>	<i>676,933</i>
<i>STOCK BORROW Q. VS. PAIB SHORT</i>	<i>4,204</i>
<i>STOCK BORROW NQ VS. PAIB SHORT</i>	<i>-</i>
<i>STOCK BORROW L/C VS PAIB SHORT</i>	<i>-</i>
	<hr/>
<i>TOTAL P.A.I.B. STOCK BORROW</i>	<i>681,137</i>

14. PAIB FAIL TO DELIVER:

<i>FAIL TO DELIVER OVER 30 DAYS</i>	<i>-</i>
<i>FAIL TO DELIVER VS PAIB SHORT</i>	<i>1,702</i>
<i>CNS FAIL TO DELIVER VS PAIB SHORT</i>	<i>15</i>
<i>CNS FAIL TO DELIVER VS THE BOX</i>	<i>-</i>
<i>CNS FAIL TO DELIVER VS REPO</i>	<i>-</i>
<i>CNS FAIL TO DELIVER VS UNALLOC./BREAK</i>	<i>-</i>
<i>CNS FAIL TO DELIVER VS FAIL TO RECEIVE</i>	<i>-</i>
	<hr/>
<i>TOTAL P.A.I.B. FAIL TO DELIVER</i>	<i>1,717</i>

15c3-3 P.A.I.B COMPUTATION

BROKER DEALER UNIT

AS OF SEPTEMBER 12, 2008

(in 000'S)

	09/12/08
15. PAIB MARGIN WITH OCC	
OCC MARGIN	-
CUSTOMER LONG SEG VS. CUST. BANK LOAN	-
OCC COMMINGLED MARGIN (CUST. BANK LOAN)	-
TOTAL P.A.I.B. MARGIN WITH OCC	-
16. OTHER	
OTHER PAIB DEBITS	-
TOTAL OTHER	-
17. TOTAL PAIB DEBITS	2,103,537
20. EXCESS - DEBITS OVER CREDITS	-
21. DEFICIT - CREDITS OVER DEBITS	420,407

EXHIBIT P

From: Kaplan, Alan: Legal (NYK)
Sent: Tue, 21 Oct 2008 16:21:58 GMT
To: Robert W COOK; dfleischman@cgsh.com
Subject: FW: LBI Customer Reserve Formula 10-17

FYI

From: Blackwell, Alastair
Sent: Tuesday, October 21, 2008 12:21 PM
To: Berkenfeld, Steven; Kaplan, Alan: Legal (NYK)
Subject: FW: LBI Customer Reserve Formula 10-17

From: Burke, William T
Sent: Tuesday, October 21, 2008 11:15 AM
To: 'McGowant@sec.gov'; 'MacchiaroliM@sec.gov'; 'DohertyR@sec.gov'; Blackwell, Alastair; Crepeau, Alex F; Stucchio, Anthony; 'mkarp@deloitte.com'

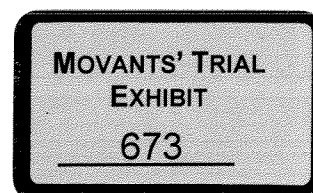
Subject: LBI Customer Reserve Formula 10-17

Please see attached files for LBI 15c3-3 as of 10/17/08. Thanks!

<<...>> <<...>>

With kind regards,
Joel K. Potenciano
BARCLAYS CAPITAL
Telephone +1 (212) 320-6786
Fax +1 (646) 885-9383
Email joel.potenciano@barclayscapital.com

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BCI-EX-(S)-00207404

LEHMAN BROTHERS INC.
CONSOLIDATED 15c3-3 RESERVE FORMULA
AS OF OCTOBER 17, 2008
(in 000's)

	<i>10/17/08 BD UNIT</i>	<i>10/17/08 GOVT UNIT</i>	<i>10/17/08 TOTAL</i>	<i>09/17/2008 TOTAL</i>	<i>VARIANCE</i>
CREDITS:					
<i>CUSTOMER CREDITS</i>	11,676,887	32,319,162	43,996,049	9,320,386	34,675,663
<i>CUSTOMER BANK LOAN</i>	1,655,529	-	1,655,529	1,343,769	311,760
<i>CUSTOMER STOCK LOAN</i>	46,837	0	46,837	3,263,868	(3,217,030)
<i>CUSTOMER FAIL TO RECEIVE</i>	5,274,379	21,811,227	27,085,606	5,796,629	21,288,977
<i>FIRM SHORT VS CUSTOMER LONG</i>	2,431,212	8,681,532	11,112,744	4,835,108	6,277,636
<i>CUSTOMER DIVIDENDS AND INTEREST</i>	103,268	-	103,268	5,322	97,946
<i>SECURITY COUNT DIFFERENCE</i>	-	-	-	-	-
<i>SUSPENSE ACCOUNT CREDITS AND SMV</i>	92,683	414,146	506,829	189,765	317,064
<i>AGED TRANSFER AND REORGANIZATION</i>	-	-	-	-	-
<i>OTHER</i>	-	-	-	-	-
TOTAL CREDITS	21,280,795	63,226,067	84,506,862	24,754,847	59,752,015
DEBITS:					
<i>CUSTOMER DEBITS</i>	12,953,933	55,824,409	68,778,342	16,636,342	52,142,000
<i>CUSTOMER STOCK BORROW</i>	1,321,615	2,417	1,324,032	2,026,218	(702,186)
<i>CUSTOMER FAIL TO DELIVER</i>	6,586,939	5,254,702	11,841,641	4,916,919	6,924,722
<i>CUSTOMER MARGIN WITH OCC</i>	518,516	-	518,516	349,858	168,658
<i>OTHER</i>	-	-	-	-	-
AGGREGATE DEBITS	21,381,003	61,081,528	82,462,531	23,929,337	58,533,194
LESS 3% OF AGGREGATE DEBIT ITEMS	(641,430)	(1,832,446)	(2,473,876)	(717,880)	(1,755,996)
TOTAL DEBITS	20,739,573	59,249,082	79,988,655	23,211,457	56,777,198
EXCESS OF CREDITS OVER DEBITS	541,222	3,976,985	4,518,207	1,543,390	2,974,817
EXCESS OF DEBITS OVER CREDITS	-	-	-	-	-
CUSHION			-	225,609	(225,609)
TOTAL REQUIREMENT			4,518,207	1,768,999	2,749,208

LEHMAN BROTHERS INC.

CONSOLIDATED 15c3-3 PAIB RESERVE FORMULA

AS OF OCTOBER 17, 2008

(in 000's)

	10/17/08 TOTAL	09/17/2008 TOTAL	VARIANCE
CREDITS:			
PAIB CREDITS	1,805,113	1,926,229	(121,116)
PAIB BANK LOAN	-	3,560	(3,560)
PAIB STOCK LOAN	-	312,247	(312,247)
PAIB FAIL TO RECEIVE	32,202	31,031	1,171
FIRM SHORT VS PAIB LONG	521,104	394,506	126,598
PAIB DIVIDENDS AND INTEREST	-	-	-
SECURITY COUNT DIFFERENCE	-	-	-
SUSPENSE ACCOUNT CREDITS AND SMV	-	-	-
AGED TRANSFER AND REORGANIZATION	-	-	-
OTHER	-	-	-
TOTAL CREDITS	2,358,419	2,667,573	(309,154)
DEBITS:			
PAIB DEBITS	1,837,702	1,600,943	236,760
PAIB STOCK BORROW	-	560,229	(560,229)
PAIB FAIL TO DELIVER	310,573	40,281	270,292
PAIB MARGIN WITH OCC	-	-	-
OTHER	-	-	-
AGGREGATE DEBITS	2,148,275	2,201,453	(53,177)
TOTAL DEBITS	2,148,275	2,201,453	(53,177)
EXCESS OF CREDITS OVER DEBITS	210,144	466,120	(255,976)
EXCESS OF DEBITS OVER CREDITS	-	-	-
CUSHION	-	25,880	(25,880)
TOTAL REQUIREMENT	210,144	492,000	(281,856)

LEHMAN BROTHERS INC.
CUSTOMER RESERVE FORMULA
BROKER DEALER UNIT
AS OF OCTOBER 17, 2008

(in 000's)

(ITS ONLY)

	10/17/08	09/17/08	VARIANCE
CUSTOMER CREDITS:			
Customer Accts (ITS)	11,804,041	3,358,915	8,445,127
Customer Accts	0	0	0
Securities Related Intercompany Payables	188,875	189,086	(211)
Phlx Options Payables	0	0	0
NonReg Commodity Credits	0	52,000	(52,000)
Bank Overdrafts	0	0	0
Bank Overdrafts(Commodity)	0	176,487	(176,487)
Other	0	0	0
Total	11,992,916	3,776,488	8,216,428
			0
CUSTOMER BANK LOAN	0	0	0
CUSTOMER STOCK LOAN	0	0	0
CUSTOMER FAIL TO RECEIVE (ITS)	4,333,585	2,202,479	2,131,106
CUSTOMER FAIL TO RECEIVE	0	0	0
CUSTOMER BANK LOAN (OCC MARGIN)	0	0	0
CUSTOMER BANK LOAN (ITS-REPO)	1,641,261	613,236	1,028,025
FIRM SHORT VS. CUSTOMER LONG (ITS)	20,834	20,633	201
FIRM SHORT VS. CUSTOMER LONG	0	0	0
SUSPENSE CREDITS	0	0	0
TOTAL CREDITS	17,988,596	6,612,836	11,375,760
CUSTOMER DEBITS:			
Customer Accts (ITS)	10,357,279	4,258,469	6,098,810
Customer Accts	0	0	0
Philadelphia Options Cust. Receivables	0	0	0
Total	10,357,279	4,258,469	6,098,810
CUSTOMER MARGIN WITH OCC	0	0	0
CUSTOMER STOCK BORROW (ITS)	1,193,138	497,654	695,484
CUSTOMER STOCK BORROW	0	0	0
CUSTOMER FAIL TO DELIVER (ITS)	5,917,103	1,200,926	4,716,177
CUSTOMER FAIL TO DELIVER	0	0	0
AGGREGATE DEBITS	17,467,520	5,957,049	11,510,471
LESS 3% OF AGGREGATE DEBIT ITEMS	524,026	178,711	345,315
TOTAL DEBITS	16,943,494	5,778,338	11,165,156
EXCESS OF CREDITS OVER DEBITS	1,045,102	834,498	210,604

LEHMAN BROTHERS INC.
CUSTOMER RESERVE FORMULA
BROKER DEALER UNIT
AS OF OCTOBER 17, 2008
(in 000's)
(ADP ONLY)

	10/17/08	09/17/08	VARIANCE
CUSTOMER CREDITS:			
Customer Accts (ITS)	0	0	0
Customer Accts	(359,147)	3,622,505	(3,981,652)
OMNI Conv payable Accts	0	0	0
Phlx Options Payables	0	0	0
NonReg Commodity Credits	0	0	0
Bank Overdrafts	43,118	62,604	(19,486)
Other	0	0	0
Total	(316,029)	3,685,109	(4,001,138)
CUSTOMER BANK LOAN	14,268	730,533	(716,265)
CUSTOMER STOCK LOAN	46,837	1,050,110	(1,003,272)
CUSTOMER FAIL TO RECEIVE (ITS)	0	0	0
CUSTOMER FAIL TO RECEIVE	940,794	2,210,873	(1,270,080)
CUSTOMER BANK LOAN (OCC MARGIN)	0	0	0
CUSTOMER BANK LOAN (ITS-REPO)	0	0	0
FIRM SHORT VS. CUSTOMER LONG (ITS)	0	0	0
FIRM SHORT VS. CUSTOMER LONG	2,410,378	2,820,568	(410,190)
CUSTOMER DIVIDEND & INTEREST	103,268	5,322	97,946
SUSPENSE CREDITS	92,683	135,230	(42,547)
OTHER	0	0	0
TOTAL CREDITS	3,292,199	10,637,746	(7,345,547)
CUSTOMER DEBITS:			
Customer Accts (ITS)	0	0	0
Customer Accts	2,596,654	7,642,271	(5,045,617)
Philadelphia Options Cust. Receivables	0	0	0
Total	2,596,654	7,642,271	(5,045,617)
CUSTOMER MARGIN WITH OCC	518,516	349,858	168,658
CUSTOMER STOCK BORROW (ITS)	0	0	0
CUSTOMER STOCK BORROW	128,477	1,201,991	(1,073,514)
CUSTOMER FAIL TO DELIVER (ITS)	0	0	0
CUSTOMER FAIL TO DELIVER	669,836	1,562,267	(892,431)
AGGREGATE DEBITS	3,913,483	10,756,386	(6,842,903)
LESS 3% OF AGGREGATE DEBIT ITEMS	117,404	322,692	(205,288)
TOTAL DEBITS	3,796,079	10,433,694	(6,637,615)
EXCESS OF DEBITS OVER CREDITS	503,880	0	503,880
EXCESS OF CREDITS OVER DEBITS	0	204,052	(204,052)

LEHMAN BROTHERS INC.
CUSTOMER RESERVE FORMULA
BROKER DEALER UNIT
AS OF OCTOBER 17, 2008

(in 000's)

(COMBINED)

	10/17/08	09/17/08	VARIANCE
CUSTOMER CREDITS:			
Customer Accts (ITS)	11,804,041	3,358,915	8,445,127
Customer Accts	(359,147)	3,622,505	(3,981,652)
Securities Related Intercompany Payables	188,875	189,086	(211)
Phlx Options Payables	0	0	0
NonReg Commodity Credits	0	52,000	(52,000)
Bank Overdrafts	43,118	62,604	(19,486)
Bank Overdrafts (Commodity)	0	176,487	(176,487)
Other	0	0	0
Total	11,676,887	7,461,597	4,215,290
CUSTOMER BANK LOAN	14,268	730,533	(716,265)
CUSTOMER STOCK LOAN	46,837	1,050,110	(1,003,272)
CUSTOMER FAIL TO RECEIVE (ITS)	4,333,585	2,202,479	2,131,106
CUSTOMER FAIL TO RECEIVE	940,794	2,210,873	(1,270,080)
CUSTOMER BANK LOAN (OCC MARGIN)	0	0	0
CUSTOMER BANK LOAN (ITS-REPO)	1,641,261	613,236	1,028,025
FIRM SHORT VS. CUSTOMER LONG (ITS)	20,834	20,633	201
FIRM SHORT VS. CUSTOMER LONG	2,410,378	2,820,568	(410,190)
CUSTOMER DIVIDEND & INTEREST	103,268	5,322	97,946
SUSPENSE CREDITS	92,683	135,230	(42,547)
OTHER	0	0	0
TOTAL CREDITS	21,280,795	17,250,582	4,030,213
CUSTOMER DEBITS:			
Customer Accts (ITS)	10,357,279	4,258,469	6,098,810
Customer Accts	2,596,654	7,642,271	(5,045,617)
Philadelphia Options Cust. Receivables	0	0	0
Total	12,953,933	11,900,739	1,053,194
CUSTOMER MARGIN WITH OCC	518,516	349,858	168,658
CUSTOMER STOCK BORROW (ITS)	1,193,138	497,654	695,484
CUSTOMER STOCK BORROW	128,477	1,201,991	(1,073,514)
CUSTOMER FAIL TO DELIVER (ITS)	5,917,103	1,200,926	4,716,177
CUSTOMER FAIL TO DELIVER	669,836	1,562,267	(892,431)
AGGREGATE DEBITS	21,381,003	16,713,435	4,667,568
LESS 3% OF AGGREGATE DEBIT ITEMS	641,430	501,403	140,027
TOTAL DEBITS	20,739,573	16,212,032	4,527,541
EXCESS OF CREDITS OVER DEBITS	541,222	1,038,550	(497,327)
EXCESS OF DEBITS OVER CREDITS	0	0	0

LEHMAN BROTHERS INC.
RULE 15c3-3 RESERVE FORMULA
(000'S)

AS OF OCTOBER 17, 2008

10/17/08

CUSTOMER CREDITS:

Customer Accounts	11,740,089
Securities Related Intercompany Payables	188,875
ITS Unsecured Shorts	63,952
Non Commodity Reg	0
Commodity Overdrafts	0
Bank Overdrafts	0
Tefra Withholdings	0
Aged Checks	0
Subtotal	11,992,916

CUSTOMER STOCK LOAN	0
CUSTOMER FAIL TO RECEIVE	4,333,585
CUSTOMER BANK LOAN (OCC MARGIN)	0
CUSTOMER BANK LOAN (ITS-REPO)	1,641,261
FIRM SHORT VS. CUSTOMER LONG	20,834
SUSPENSE CREDITS	0

TOTAL CREDITS	17,988,596
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CUSTOMER DEBITS:

Customer Accounts	10,357,279
OMNI Rec Formula	0
Philadelphia Options Cust. Receivables	0
Subtotal	10,357,279

CUSTOMER MARGIN WITH OCC	0
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CUSTOMER STOCK BORROW	1,193,138
CUSTOMER FAIL TO DELIVER	5,917,103
AGGREGATE DEBITS	17,467,520
Less 3%	524,026
TOTAL DEBITS	16,943,494

EXCESS CREDITS OVER DEBITS	<u>1,045,102</u>
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15c3-3 CUSTOMER RESERVE COMPUTATION
BROKER DEALER UNIT
AS OF OCTOBER 17, 2008
(in 000'S)

	10/17/08
1. CUSTOMER CREDITS:	
CUSTOMER SECURITY ACCOUNTS	8,432,106
CUSTOMER ADJUSTMENTS	(2,322,077)
UNMAPPED CUSTOMER PAYABLE	15
CUSTOMER NETTING LBI (incl. 941-20159 & 941-20160)	(59,829)
CUSTOMER NETTING NB	-
MONEY CONTROL ADJUSTMENTS	37,527
NON-BROKER DEALER AFFILIATES TYPE 5	-
BOOKKEEPING ADJUSTMENTS	-
CUSTOMER ADJUSTMENTS VS. ADP OMNI (097-00084)	-
NON-NETWORK OFFSHR MUTUAL FUNDS	-
BANK OVERDRAFTS	43,118
NON-BROKER DEALER AFFILIATES - OTHER TYPES	224,115
HOUSE ACCOUNTS	12
TEFRA WITHHOLDING PAYABLE	95
LEGAL LEDGER CONTRA ACCOUNTS	116
BREAK VS. CUSTOMER LONG	633
FIRM LONG VS. CUSTOMER SHORT	(380,256)
NONCUST LONG VS. CUSTOMER SHORT	(6,286,273)
REVERSE REPO VS. CUSTOMER SHORT	-
PAIB LONG VS. CUSTOMER SHORT	(5,330)
SHORT & CREDIT INTEREST	-
MONEY FUND SETTLEMENTS 098-00003 & 098-70001	-
UNALLOCATED CUSTOMER SHORT	-
TOTAL CUSTOMER CREDITS	(316,029)
2. CUSTOMER BANK LOAN:	
OCC MARGIN	-
OCC MARGIN DEFICIT	-
OCC COMMINGLED MARGIN (NONCUST BANK LOAN)	-
STOCK BORROW VS. CUST BANK LOAN	-
STOCK BORROW VS. FIRM BANK LOAN	-
STOCK BORROW PLEDGE Q VS. FIRM BANK LOAN	-
STOCK BORROW PLEDGE NQ VS. FIRM BANK LOAN	-
STOCK BORROW L/C VS FIRM BANK LOAN	-
FAIL TO DELIVER VS. FIRM BANK LOAN	-
CUSTOMER BANK LOAN VS. NON-CUST LONG	-
CUSTOMER LONG VS. CUSTOMER BANK LOAN	14,268
CUST BANK LOAN - CUST NOT LONG	-
NONCUST BANK LOAN - NONCUSTOMER NOT LONG	-
FIRM BANK LOAN - FIRM NOT LONG	-
TOTAL CUSTOMER BANK LOAN	14,268
3. CUSTOMER STOCK LOAN:	
STOCK LOAN	135,461
STOCK LOAN MTM	-
STOCK LOAN WITH CLEARING ORG	-
STOCK LOAN FREE OF MONEY	-
STOCK LOAN MTM DEFICIT	-
STOCK LOAN BOB ADJUSTMENT	-
UNALLOCATED STOCK LOAN ADJ	-
STOCK LOAN VS. STOCK BORROW L/C	-

15c3-3 CUSTOMER RESERVE COMPUTATION
BROKER DEALER UNIT
AS OF OCTOBER 17, 2008
(in 000'S)

	<u>10/17/08</u>
STOCK LOAN PLEDGE VS. STOCK BORROW L/C	-
STOCK LOAN VS. REVERSE REPO	-
STOCK LOAN PLEDGE VS. REVERSE REPO	-
STOCK LOAN VS. PAIB LONG	-
STOCK LOAN PLEDGE VS. PAIB LONG	-
STOCK LOAN VS. STOCK BORROW	(86,631)
STOCK LOAN VS. STOCK BORROW PLEDGE Q.	-
STOCK LOAN VS. STOCK BORROW PLEDGE NQ	-
STOCK LOAN PLEDGE VS. STOCK BORROW	-
STOCK LOAN PLEDGE VS. STOCK BORROW PLEDGE Q.	-
STOCK LOAN PLEDGE VS. STOCK BORROW PLEDGE NQ	-
STOCK LOAN VS. NONCUSTOMER LONG	(1,423)
STOCK LOAN PLEDGE VS. NONCUSTOMER LONG	-
STOCK LOAN VS. FIRM LONG	(570)
STOCK LOAN PLEDGE VS. FIRM LONG	-
TOTAL CUSTOMER STOCK LOAN	46,837

4. CUSTOMER FAIL TO RECEIVE:	
FAIL TO RECEIVE	11,002,946
CNS FAIL TO RECEIVE	622,134
MISC FAIL TO RECEIVE ADJUSTMENTS	(598,880)
OMNI FAIL TO RECEIVE ADJUSTMENTS	-
FAIL TO RECEIVE MTM ADJUSTMENT	-
FAIL TO RECEIVE ADJ. PAM MONEY MARKET FUND	-
FAIL TO RECEIVE VS. FAIL TO DELIVER	(142,663)
FAIL TO RECEIVE VS. REVERSE REPO	-
FAIL TO RECEIVE VS. MTM DEFICIT	-
FAIL TO RECEIVE VS. STOCK BORROW	-
FAIL TO RECEIVE VS. STOCK BORROW PLEDGE Q.	-
FAIL TO RECEIVE VS. STOCK BORROW PLEDGE NQ	-
FAIL TO RECEIVE VS. STOCK BORROW L/C	-
FAIL TO RECEIVE VS. FAIL TO DELIVER CNS	(63,345)
FAIL TO RECEIVE VS. FIRM LONG	(5,445,396)
FAIL TO RECEIVE VS. NONCUSTOMER LONG	(3,908,328)
FAIL TO RECEIVE VS. PAIB LONG	(32,202)
FAIL TO RECEIVE VS. UNALLOCATED / BREAK	-
CNS FAIL TO RECEIVE VS. FIRM LONG	(188,651)
CNS FAIL TO RECEIVE VS. NONCUSTOMER LONG	(261,631)
CNS FAIL TO RECEIVE VS. PAIB LONG	-
CNS FAIL TO RECEIVE ADJUSTMENT	-
CNS FAIL TO RECEIVE VS. STOCK BORROW	-
CNS FAIL TO RECEIVE VS. STOCK BORROW PLEDGE Q.	-
CNS FAIL TO RECEIVE VS. STOCK BORROW PLEDGE NQ	-
CNS FAIL TO RECEIVE VS. STOCK BORROW L/C	-
CNS FAIL TO RECEIVE VS. REVERSE REPO	-
CNS FAIL TO RECEIVE VS. FAIL TO DELIVER	(43,190)
TOTAL CUSTOMER FAIL TO RECEIVE	940,794

5. FIRM SHORT VS CUSTOMER LONG:	
TOTAL FIRM SHORT	-
FIRM OMNI SHORT	-
FIRM SHORT VS. CUSTOMER LONG	1,107,602
NONCUSTOMER SHORT VS. CUSTOMER LONG	1,138,722
REPO VS. CUSTOMER LONG	42,557

15c3-3 CUSTOMER RESERVE COMPUTATION
BROKER DEALER UNIT
AS OF OCTOBER 17, 2008
(in 000'S)

	<u>10/17/08</u>
PAIB SHORT VS. CUSTOMER LONG	121,497
REPO VS. UNALLOCATED	-
FIRM SHORT VS. UNALLOCATED	-
NONCUSTOMER SHORT VS. UNALLOCATED	-
	<hr/>
TOTAL FIRM SHORT VS. CUSTOMER LONG	2,410,378
6. CUSTOMER DIVIDEND & INTEREST:	
DIVIDEND & INT PAYABLES	106,733
ADJUSTMENTS FROM DIVIDEND DEPT.	(3,465)
	<hr/>
TOTAL CUSTOMER DIVIDENDS & INTEREST	103,268
7. SECURITY COUNT DIFFERENCE > 7 DAYS:	
8. SUSPENSE ACCOUNTS	
SUSPENSE CREDITS & SMV:	-
CUSTOMER UNAPPLIED 090-01234	7,364
ABANDONED PROPERTY / SOFT DOLLARS / COMM. REBAT	85,319
	<hr/>
TOTAL SUSPENSE ACCOUNTS	92,683
9. AGED TRANSFERS & REORGANIZATION:	
TRANSFER SHORTS OVER 40 DAYS	-
REORG/REDEMPTION SMV OVER 7 DAYS	-
	<hr/>
TOTAL AGED TRANSFERS & REORGANIZATION	-
10. OTHER:	
OTHER CREDITS	-
	<hr/>
TOTAL OTHER	-
TOTAL CREDITS	3,292,199
12. CUSTOMER DEBITS:	
CUSTOMER SECURITY ACCOUNTS	5,175,050
CUSTOMER NETTING LBI (incl. 941-20159 & 941-20160)	(59,829)
CUSTOMER NETTING NB	-
MONEY CONTROL ADJUSTMENT	-
CUSTOMER ADJUSTMENT (VARIOUS and LBHI Debits)	(2,470,958)
CUSTOMER ADJUSTMENTS VS. ADP OMNI (097-00084)	-
BOOKKEEPING ADJUSTMENTS	-
INV ADVISORY FEES RELATED TO NB MARGIN DEBITS	-
MONEY FUND RECEIVABLE	-
MARGIN INTEREST	-
UNSECURED DEBITS	(40,984)
PARTLY SECURED DEBITS	(6,625)
NON-PURPOSE LOANS	-
RULE 144 UNSECURED DEBITS	-
SECURITY CONCENTRATION	-
	<hr/>
TOTAL CUSTOMER DEBITS	2,596,654

15c3-3 CUSTOMER RESERVE COMPUTATION
BROKER DEALER UNIT
AS OF OCTOBER 17, 2008
(in 000'S)

	10/17/08
13. CUSTOMER STOCK BORROW:	
STOCK BORROW	215,175
STOCK BORROW MTM	-
STOCK BORROW L.O.C.	-
STOCK BORROW VS. CUST SHORT ADJ.	-
STOCK BORROW FREE OF MONEY	-
STOCK BORROW LC VS SECURED BK LOAN	-
STOCK BORROW L/C VS. CUSTOMER SHORT	-
STOCK BORROW NQ VS. CUSTOMER SHORT	-
STOCK BORROW L/C VS. FIRM BANK LOAN	-
STOCK BORROW NQ VS. FIRM BANK LOAN	-
STOCK BORROW VS STOCK LOAN	(86,631)
STOCK BORROW VS. STOCK LOAN PLEDGE	-
STOCK BORROW PLEDGE Q VS. STOCK LOAN	-
STOCK BORROW PLEDGE NQ VS. STOCK LOAN	-
STOCK BORROW PLEDGE Q. VS. STOCK LOAN PLEDGE	-
STOCK BORROW PLEDGE NQ VS. STOCK LOAN PLEDGE	-
STOCK BORROW L/C VS. STOCK LOAN	-
STOCK BORROW L/C VS. STOCK LOAN PLEDGE	-
STOCK BORROW L/C VS. FIRM SHORT	-
STOCK BORROW L/C VS. NONCUSTOMER SHORT	-
STOCK BORROW VS. FIRM SHORT	-
STOCK BORROW VS. NONCUSTOMER SHORT	(67)
STOCK BORROW PLEDGE Q. VS FIRM SHORT	-
STOCK BORROW PLEDGE Q. VS. NONCUSTOMER SHORT	-
STOCK BORROW PLEDGE NQ VS. FIRM SHORT	-
STOCK BORROW PLEDGE NQ VS. NONCUSTOMER SHORT	-
STOCK BORROW VS. THE BOX	-
STOCK BORROW PLEDGE Q. VS. THE BOX	-
STOCK BORROW PLEDGE NQ VS. THE BOX	-
STOCK BORROW L/C VS. THE BOX	-
STOCK BORROW VS. FAIL REC CNS	-
STOCK BORROW PLEDGE Q. VS. F/R CNS	-
STOCK BORROW PLEDGE NQ VS. F/R CNS	-
STOCK BORROW L/C VS. F/R CNS	-
STOCK BORROW L/C VS. REPO	-
STOCK BORROW VS. REPO	-
STOCK BORROW PLEDGE Q. VS. REPO	-
STOCK BORROW PLEDGE NQ VS. REPO	-
STOCK BORROW VS. UNALLOCATED	-
STOCK BORROW PLEDGE Q. VS. UNALLOCATED	-
STOCK BORROW PLEDGE NQ VS. UNALLOCATED	-
STOCK BORROW L/C VS. UNALLOCATED	-
STOCK BORROW VS. PAIB SHORT	-
STOCK BORROW PLEDGE Q. VS. PAIB SHORT	-
STOCK BORROW PLEDGE NQ VS. PAIB SHORT	-
STOCK BORROW L/C VS. PAIB SHORT	-
STOCK BORROW L/C VS. FAIL TO RECEIVE	-
STOCK BORROW VS. FAIL TO RECEIVE	-
STOCK BORROW PLEDGE Q. VS. FAIL TO RECEIVE	-
STOCK BORROW PLEDGE NQ VS. FAIL TO RECEIVE	-
TOTAL CUSTOMER STOCK BORROW	128,477
14. CUSTOMER FAIL TO DELIVER:	

15c3-3 CUSTOMER RESERVE COMPUTATION
BROKER DEALER UNIT
AS OF OCTOBER 17, 2008
(in 000'S)

	<u>10/17/08</u>
FAIL TO DELIVER	9,035,807
CNS FAIL TO DELIVER	1,235,456
MISC FAIL TO RECEIVE ADJUSTMENTS	-
OMNI FAIL TO RECEIVE ADJUSTMENTS	-
FAIL TO DELIVER MTM ADJUSTMENT	-
FAIL TO DELIVER ADJUSTMENT	-
FAIL TO DELIVER VS. FAIL TO RECEIVE	(142,663)
FAIL TO DELIVER VS. FAIL TO RECEIVE CNS	(43,190)
FAIL TO DELIVER OVER 30 DAYS	(826)
FAIL TO DELIVER VS. FIRM SHORT	(2,782,459)
FAIL TO DELIVER VS. PAIB SHORT	(305,516)
FAIL TO DELIVER VS. REPO	-
FAIL TO DELIVER VS. THE BOX	(876,298)
FAIL TO DELIVER VS. NON-CUSTOMER SHORT	(4,236,780)
FAIL TO DELIVER VS. UNALLOCATED/ BREAK	-
CNS FAIL TO DELIVER VS. FIRM SHORT	(685,534)
CNS FAIL TO DELIVER VS. NONCUSTOMER SHORT	(398,515)
CNS FAIL TO DELIVER VS. PAIB SHORT	(5,057)
CNS FAIL TO DELIVER VS. THE BOX	(61,244)
CNS FAIL TO DELIVER VS. REPO	-
CNS FAIL TO DELIVER VS. CUSTOMER BANK LOAN	-
CNS FAIL TO DELIVER VS. UNALLOC/BREAK	-
CNS FAIL TO DELIVER VS. FAIL TO RECEIVE	(63,345)
TOTAL CUSTOMER FAIL TO DELIVER	669,836
15. CUSTOMER MARGIN WITH OCC	
OCC MARGIN	-
OCC PROPRIETARY QUALIFIED COLLATERAL	518,516
OCC COMMINGLED MARGIN (CUST. BANK LOAN)	-
TOTAL CUSTOMER MARGIN WITH OCC	518,516
16. OTHER	
OTHER CUSTOMER DEBITS	-
TOTAL OTHER	-
17. AGGREGATE DEBIT ITEMS	3,913,483
18. LESS 3%	(117,404)
19. TOTAL 15C3-3 DEBITS	3,796,079
20. EXCESS - DEBITS OVER CREDITS	503,880
21. DEFICIT - CREDITS OVER DEBITS	

*LEHMAN BROTHERS INC.
CUSTOMER RESERVE FORMULA
GOVERNMENT DEALER UNIT (MTS)
AS OF OCTOBER 17, 2008
(in 000's)*

	<u>10/17/08</u>
<i>CREDITS :</i>	
<i>CUSTOMER CREDITS</i>	32,319,162
<i>CUSTOMER BANK LOAN</i>	0
<i>CUSTOMER STOCK LOAN</i>	0
<i>CUSTOMER FAIL TO RECEIVE</i>	21,811,227
<i>FIRM SHORT VS CUSTOMER LONG</i>	8,681,532
<i>CUSTOMER DIVIDENDS AND INTEREST</i>	0
<i>SECURITY COUNT DIFFERENCE</i>	0
<i>SUSPENSE ACCOUNT CREDITS AND SMV</i>	414,146
<i>AGED TRANSFER AND REORGANIZATION</i>	0
<i>OTHER</i>	<u>0</u>
<i>TOTAL CREDITS</i>	63,226,067
<i>DEBITS:</i>	
<i>CUSTOMER DEBITS</i>	55,824,409
<i>CUSTOMER STOCK BORROW</i>	2,417
<i>CUSTOMER FAIL TO DELIVER</i>	5,254,702
<i>CUSTOMER MARGIN WITH OCC</i>	0
<i>OTHER</i>	<u>0</u>
<i>AGGREGATE DEBITS</i>	61,081,528
<i>LESS 3% OF AGGREGATE DEBIT ITEMS</i>	<u>1,832,446</u>
<i>TOTAL DEBITS</i>	59,249,082
<i>EXCESS OF CREDITS OVER DEBITS</i>	<u>3,976,985</u>

BROKER DEALER UNIT
AS OF OCTOBER 17, 2008
(in 000'S)

	<u>10/17/08</u>
1. P.A.I.B. CREDITS:	
PAIB CREDITS	2,285,408
BREAK VS. PAIB LONG	-
PAIB CREDIT ADJ	(8,000)
PAIB DEFERRED COMMISSIONS AND IA FEES	20,004
PAIB LONG VS CUSTOMER SHORT	5,330
FIRM LONG vs PAIB SHORT	(220,498)
NONCUST LONG VS. PAIB SHORT	(155,633)
UNALLOCATED PAIB SHORT	-
PAIB SHORT VS CUSTOMER LONG	(121,497)
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P.A.I.B. CREDITS:	1,805,113
2. PAIB BANK LOAN:	
OCC MARGIN	-
OCC MARGIN DEFECIT	-
PAIB LONG VS. FIRM BANK LOAN	-
PAIB LONG VS. CUST BANK LOAN	-
PAIB LONG VS. PAIB BANK LOAN	-
PAIB BANK LOAN - PAIB NOT LONG	-
CUST BANK LOAN- CUSTOMER NOT LONG	-
FIRM BANK LOAN- CUSTOMER NOT LONG	-
	<hr/>
TOTAL P.A.I.B. BANK LOAN	-
3. PAIB STOCK LOAN:	
STOCK LOAN VS PAIB LONG	-
STOCK LN PLDG VS. PAIB LONG	-
	<hr/>
TOTAL CUSTOMER STOCK LOAN	-
4. PAIB FAIL TO RECEIVE:	
FAIL TO RECEIVE VS PAIB LONG	32,202
CNS FAIL TO RECEIVE VS PAIB LONG	-
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TOTAL P.A.I.B. FAIL TO RECEIVE	32,202
5. FIRM SHORT VS PAIB LONG:	
REPO VS PAIB LONG	-
NONCUST SHORT VS. PAIB LONG	346,571
FIRM SHORT VS PAIB LONG	174,533
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**BROKER DEALER UNIT
AS OF OCTOBER 17, 2008
(in 000'S)**

	<u>10/17/08</u>
TOTAL FIRM SHORT VS P.A.I.B. LONG	521,104
6. PAIB DIVIDEND & INTEREST:	
STOCK DIVIDENDS > 30 DAYS	-
MONEY CONTROL ADJUSTMENT	-
DIVIDEND & INT PAYABLES > 7 DAYS	-
TOTAL P.A.I.B. DIVIDENDS & INTEREST	-
7. SECURITY COUNT DIFFERENCE > 7 DAYS:	-
8. SUSPENSE CREDITS & SMV >7 DAYS:	-
9. AGED TRANSFERS & REORGANIZATION:	
TRANSFER SHORTS OVER 40 DAYS	-
REORG/REDEMPTION SMV OVER 7 DAYS	-
TOTAL AGED TRANSFERS & REORGANIZATION	-
10. OTHER:	
OTHER CREDITS	-
TOTAL OTHER	-
TOTAL PAIB CREDITS	2,358,419
12. P.A.I.B. DEBITS:	
CUSTOMER SECURITY ACCOUNTS	2,014,272
VARIOUS PAIB DEBIT ADJ	(176,570)
UNSECURED DEBITS	-
PARTLY SECURED DEBITS	-
RULE 144 UNSECURED DEBITS	-
SECURITY CONCENTRATION	-
BREAK VS CUSTOMER LONG	-
P.A.I.B. DEBITS:	1,837,702
13. PAIB STOCK BORROW:	

BROKER DEALER UNIT
AS OF OCTOBER 17, 2008
(in 000'S)

	<u>10/17/08</u>
STOCK BORROW VS PAIB SHORT	-
STOCK BORROW Q. VS. PAIB SHORT	-
STOCK BORROW NQ VS. PAIB SHORT	-
STOCK BORROW L/C VS PAIB SHORT	-
TOTAL P.A.I.B. STOCK BORROW	-
14. PAIB FAIL TO DELIVER:	
FAIL TO DELIVER OVER 30 DAYS	-
FAIL TO DELIVER VS PAIB SHORT	305,516
CNS FAIL TO DELIVER VS PAIB SHORT	5,057
CNS FAIL TO DELIVER VS THE BOX	-
CNS FAIL TO DELIVER VS REPO	-
CNS FAIL TO DELIVER VS UNALLOC./BREAK	-
CNS FAIL TO DELIVER VS FAIL TO RECEIVE	-
TOTAL P.A.I.B. FAIL TO DELIVER	310,573
15. PAIB MARGIN WITH OCC	
OCC MARGIN	-
CUSTOMER LONG SEG VS. CUST. BANK LOAN	-
OCC COMMINGLED MARGIN (CUST. BANK LOAN)	-
TOTAL P.A.I.B. MARGIN WITH OCC	-
16. OTHER	
OTHER PAIB DEBITS	-
TOTAL OTHER	-
17. TOTAL PAIB DEBITS	2,148,275
20. EXCESS - DEBITS OVER CREDITS	-
21. DEFICIT - CREDITS OVER DEBITS	210,144

Lehman Brother, Lehman Brothers Inc.
Customer/PAIB i Customer/PAIB Reserve Analysis

Customer:	10/17/08	10/10/08	09/30/08	09/26/08	09/19/08	09/17/08	10/17 v.09/17 Variance	Comments
MTS								
Free Credits	1,106,920	528,373	456,905	456,438	214,410	77,216	1,029,704	Increase due to frozen Chase records
SCS Cash	206	206	38,216	38,211	38,194	46,462	(46,256)	
Option Margin	13,210	13,210	13,205	13,203	7,130	15,824	(2,614)	
P & I	376,662	345,872	339,982	451,277	22,187	22,858	353,805	Increase due to no cash receipts from Chase and DTC related to principal and interest
Aged Fails and Partly Secured Debits	275,934	34,881	26,571	31,539	4,595	7,518	268,416	
Customer Receivable Versus Box	-	-	-	-	-	-	-	
Stock Record/P&O Items	334,123	258,239	25,229	27,359	76,152	86,809	247,314	
Overdrafts	-	-	-	-	-	3,231	-	
Unapplied Cash / Suspense	37,484	36,984	16,856	30,386	61,014	31,677	5,807	
3% ADI	1,832,446	1,170,216	766,752	622,487	394,926	216,477	1,615,969	Increased customer fails over the period with no street-side settlements
Sub-total	3,976,986	2,387,982	1,683,714	1,674,130	821,840	504,841	3,472,145	
ADP								
Free Credits / Margin	(1,382,431)	(3,443,710)	(3,476,374)	(2,944,607)	(2,724,737)	481,456	(1,863,888)	Decrease in customer credits related to accounts migrating to BCI for \$563 mil
Net Customer Financing	815,623	1,115,713	2,341,571	2,050,094	1,509,788	(831,906)	1,647,529	
OMNI Conversion Payable	-	-	-	-	-	-	-	
O/Drafts	43,118	43,026	46,439	46,145	222,207	62,604	(19,486)	
Dividends	103,268	87,724	17,184	16,688	5,322	5,322	97,946	
S/B L O C vs. Customer Short	-	-	-	-	-	-	-	
S/B NQ vs. Customer Short	-	6,559	1,249	14,563	10,976	5,287	(5,287)	
Non-Broker Dealer Affil	224,115	224,115	224,115	224,115	210,769	290,539	(66,424)	
OCC Proprietary Qualified Collateral	(518,516)	(513,787)	(472,428)	(479,781)	(507,418)	(349,858)	(168,658)	Increase in cash collateral pledged to OCC in lieu of LOCs
Firm Bank Loan - Firm Not Long	-	-	4,455	-	-	-	-	
Suspense	-	41,729	41,620	56,118	35,290	39,897	(39,897)	
Unapplied Cash	7,364	7,388	7,779	7,779	11,553	10,121	(2,757)	
Abandoned Property / Soft Dollars (\$42 mil)	85,319	85,319	85,319	85,319	85,319	85,212	107	
Other	856	8,602	28,984	85,271	115,894	82,685	(81,829)	
3% ADI	117,404	163,381	175,971	213,518	401,980	322,692	(205,288)	Decreased netting of fails or other ADI items
Sub-total	(503,880)	(2,173,941)	(974,113)	(624,778)	(623,057)	204,052	(707,932)	
ITS								
Free Credits (primarily SCS cash)	268,249	381,146	430,062	17,579	(124,665)	160,575	107,675	Decrease in ITS SCS free credits
Unsecured Shorts	63,952	63,952	80,145	77,049	77,049	77,639	(13,688)	
Securities Related IC Payable (Mostly ITS)	188,875	188,875	188,875	188,875	189,227	189,086	(211)	
Other	-	-	-	-	-	-	-	
3% ADI	524,026	510,696	452,295	421,462	228,486	178,711	345,314	Increase in customer CODs with no street-side settlement
Sub-total	1,045,102	1,144,668	1,161,377	704,965	370,097	606,011	438,090	
Commodities								
O/Drafts	-	-	-	-	-	176,487	(176,487)	No foreign exchange related credits in lock-up per SEC
Non-Reg Commodity Credits	-	-	-	-	-	52,000	(52,000)	
Sub-total	-	-	-	-	-	228,487	(228,487)	
Requirement	4,518,208	1,358,709	1,870,977	1,754,317	568,879	1,543,392	2,974,816	
Amount Segregated for Customer	1,769,000	1,769,000	1,769,000	1,769,000	1,769,000	1,769,000	1,769,000	
(Excess) Deficit over Requirement	2,749,208	(410,291)	101,977	(14,683)	(1,200,121)	(225,608)	(225,608)	
PAIB:								
Net PAIB Debits/Credits	(32,589)	235,405	156,405	143,706	253,918	325,286	(357,875)	Decrease in LOTC payables due to reduced inventory
Bank Loan	-	-	813	6,374	114	3,560	(3,560)	
Stock Loan	-	64,500	95,259	80,291	80,009	312,247	(312,247)	
F/R Vs PAIB Long	32,202	27,443	44,109	173,945	4,073	31,031	1,171	
Firm Short vs. PAIB Long	521,104	445,267	555,562	505,041	403,853	394,506	126,598	
Stock Borrow	-	(204,577)	(252,725)	(260,224)	(442,644)	(560,229)	560,229	
Fail to Deliver	(310,573)	(325,708)	(390,009)	(376,568)	(105,904)	(40,281)	(270,292)	
Requirement	210,144	242,330	209,414	272,565	193,419	466,120	(255,976)	
Amount Segregated for PAIB	492,000	492,000	492,000	492,000	492,000	492,000	492,000	
(Excess) over Requirement	(281,856)	(249,670)	(282,586)	(219,435)	(298,581)	(25,880)	(25,880)	
Notes:								
* Denotes account net debit balances.								
	10/17/08	10/10/08	09/30/08	09/26/08	09/19/08	09/17/08		
Total Customer & PAIB Requirement	4,728,351	1,601,040	2,080,391	2,026,882	762,298	2,009,512		
Cushion	(2,467,351)	659,960	180,609	234,118	1,498,702	251,488		
Total 15c3-3 Segregated	2,261,000	2,261,000	2,261,000	2,261,000	2,261,000	2,261,000		
Aggregate Debits:								
MTS Aggregate Debits	61,081,528	39,007,213	25,358,394	20,749,580	13,164,196	7,215,902		
ITS Aggregate Debits	17,467,520	17,023,193	15,408,632	14,048,731	7,616,195	5,957,049		
ADP Aggregate Debits	3,913,483	5,445,022	5,868,365	7,117,264	13,399,328	10,756,386		
Total Aggregate Debits	82,462,531	61,475,428	46,635,391	41,915,575	34,179,719	23,929,337		
Total 3% of Aggregate Debits	2,473,875	1,844,293	1,405,018	1,257,467	1,025,392	717,881		
Breakdown of 15c3-3 Segregation:								
Qualified Securities with JP Morgan Chase Customers	769,000	769,000	769,000	769,000	769,000	769,000		
Qualified Securities with JP Morgan Chase PAIB	492,000	492,000	492,000	492,000	492,000	492,000		
Cash Deposit with Wells Fargo	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000		
Total Lock-up	2,261,000	2,261,000	2,261,000	2,261,000	2,261,000	2,261,000		

Notes:
** Includes both the 15c3-3 Customer and PAIB requirement that is lock-up as of 09/17/2008. See Breakdown of 15c3-3 Segregation.

	<u>10/17/08</u>	<u>09/30/08</u>	VARIANCE
Customer Credits	6,087,741	6,030,490	57,251
Firm Long vs Cust Short	(380,256)	(64,983)	(315,273)
Non Cust Long vs. Cust Short	(6,286,273)	(6,726,451)	440,178
PAIB Long vs Cust Short	(5,330)	(3,326)	(2,004)
Reverse Repo vs Cust Short	-	-	-
Cust Long vs Cust Short	-	-	-
Stock Borrow vs Cust Short	(128,477)	(409,381)	280,904
Fail to Deliver vs Cust Short	(669,836)	(2,302,723)	1,632,887
sub-total	<u>(7,470,172)</u>	<u>(9,506,864)</u>	<u>(9,506,864)</u>
			2,036,692
Total	(1,382,431)	(3,476,374)	2,093,943
Customer Debits	2,644,263	2,673,031	(28,768)
Money Fund Receivable	-	-	-
Unsecured/Partly Secured Receivables/Non-Purpose Loans	(47,609)	9,399	(57,008)
Security Concentrations	-	-	-
Cust. Long vs. Customer Bank Loan	(14,268)	(26,625)	12,357
Stock Loan vs Cust Long	(46,837)	(851,548)	804,711
Cust Long vs Cust Short	-	-	-
Fail to Receive vs Cust Long	(940,794)	(2,477,575)	1,536,782
Firm Short vs Customer Long	(2,410,378)	(1,668,253)	(742,125)
sub-total	<u>(3,459,886)</u>	<u>(5,014,602)</u>	<u>(5,014,602)</u>
			1,554,716
Total	(815,623)	(2,341,571)	1,525,948
Plus:			
Stock Borrow / SB Q vs. Firm Bank Loan	-	-	-
Stock Borrow vs. Cust Bank Loan	-	-	-
Net Cust Dr./Cr.	(566,808)	(1,134,803)	567,995

**15c3-3 CUSTOMER RESERVE COMPUTATION
BROKER DEALER UNIT**

10/17/08

(in 000'S)

	10/17/08
1. CUSTOMER CREDITS:	
CUSTOMER SECURITY ACCOUNTS	8,432,106
CUSTOMER ADJUSTMENTS	(2,322,077)
UNMAPPED CUSTOMER PAYABLE	15
CUSTOMER NETTING LBI (incl. 941-20159 & 941-20160)	(59,829)
CUSTOMER NETTING NB	-
MONEY CONTROL ADJUSTMENTS	37,527
NON-BROKER DEALER AFFILIATES TYPE 5	-
BOOKKEEPING ADJUSTMENTS	-
CUSTOMER ADJUSTMENTS VS. ADP OMNI (097-00084)	-
NON-NETWORK OFFSHR MUTUAL FUNDS	-
BANK OVERDRAFTS	43,118
NON-BROKER DEALER AFFILIATES - OTHER TYPES	224,115
HOUSE ACCOUNTS	12
TEFRA WITHHOLDING PAYABLE	95
LEGAL LEDGER CONTRA ACCOUNTS	116
BREAK VS. CUSTOMER LONG	633
FIRM LONG VS. CUSTOMER SHORT	(380,256)
NONCUST LONG VS. CUSTOMER SHORT	(6,286,273)
REVERSE REPO VS. CUSTOMER SHORT	-
PAIB LONG VS. CUSTOMER SHORT	(5,330)
SHORT & CREDIT INTEREST	-
MONEY FUND SETTLEMENTS 098-00003 & 098-70001	-
UNALLOCATED CUSTOMER SHORT	-
TOTAL CUSTOMER CREDITS	(316,029)
2. CUSTOMER BANK LOAN:	
OCC MARGIN	-
OCC MARGIN DEFICIT	-
OCC COMMINGLED MARGIN (NONCUST BANK LOAN)	-
STOCK BORROW VS. CUST BANK LOAN	-
STOCK BORROW VS. FIRM BANK LOAN	-
STOCK BORROW PLEDGE Q VS. FIRM BANK LOAN	-
STOCK BORROW PLEDGE NQ VS. FIRM BANK LOAN	-
STOCK BORROW L/C VS FIRM BANK LOAN	-
FAIL TO DELIVER VS. FIRM BANK LOAN	-
CUSTOMER BANK LOAN VS. NON-CUST LONG	-
CUSTOMER LONG VS. CUSTOMER BANK LOAN	14,268
CUST BANK LOAN - CUST NOT LONG	-
NONCUST BANK LOAN - NONCUSTOMER NOT LONG	-
FIRM BANK LOAN - FIRM NOT LONG	-
TOTAL CUSTOMER BANK LOAN	14,268
3. CUSTOMER STOCK LOAN:	
STOCK LOAN	135,461
STOCK LOAN MTM	-
STOCK LOAN WITH CLEARING ORG	-
STOCK LOAN FREE OF MONEY	-
STOCK LOAN MTM DEFICIT	-
STOCK LOAN BOB ADJUSTMENT	-
UNALLOCATED STOCK LOAN ADJ	-
STOCK LOAN VS. STOCK BORROW L/C	-
STOCK LOAN PLEDGE VS. STOCK BORROW L/C	-
STOCK LOAN VS. REVERSE REPO	-
STOCK LOAN PLEDGE VS. REVERSE REPO	-
STOCK LOAN VS. PAIB LONG	-
STOCK LOAN PLEDGE VS. PAIB LONG	-
STOCK LOAN VS. STOCK BORROW	(86,631)
STOCK LOAN VS. STOCK BORROW PLEDGE Q.	-
STOCK LOAN VS. STOCK BORROW PLEDGE NQ	-
STOCK LOAN PLEDGE VS. STOCK BORROW	-
STOCK LOAN PLEDGE VS. STOCK BORROW PLEDGE Q.	-
STOCK LOAN PLEDGE VS. STOCK BORROW PLEDGE NQ	-
STOCK LOAN VS. NONCUSTOMER LONG	(1,423)
STOCK LOAN PLEDGE VS. NONCUSTOMER LONG	-
STOCK LOAN VS. FIRM LONG	(570)
STOCK LOAN PLEDGE VS. FIRM LONG	-
TOTAL CUSTOMER STOCK LOAN	46,837

15c3-3 CUSTOMER RESERVE COMPUTATION

BROKER DEALER UNIT

10/17/08

(in 000'S)

	10/17/08
4. CUSTOMER FAIL TO RECEIVE:	
FAIL TO RECEIVE	11,002,946
CNS FAIL TO RECEIVE	622,134
MISC FAIL TO RECEIVE ADJUSTMENTS	(598,880)
OMNI FAIL TO RECEIVE ADJUSTMENTS	-
FAIL TO RECEIVE MTM ADJUSTMENT	-
FAIL TO RECEIVE ADJ. PAM MONEY MARKET FUND	-
FAIL TO RECEIVE VS. FAIL TO DELIVER	(142,663)
FAIL TO RECEIVE VS. REVERSE REPO	-
FAIL TO RECEIVE VS. MTM DEFICIT	-
FAIL TO RECEIVE VS. STOCK BORROW	-
FAIL TO RECEIVE VS. STOCK BORROW PLEDGE Q.	-
FAIL TO RECEIVE VS. STOCK BORROW PLEDGE NQ	-
FAIL TO RECEIVE VS. STOCK BORROW L/C	-
FAIL TO RECEIVE VS. FAIL TO DELIVER CNS	(63,345)
FAIL TO RECEIVE VS. FIRM LONG	(5,445,396)
FAIL TO RECEIVE VS. NONCUSTOMER LONG	(3,908,328)
FAIL TO RECEIVE VS. PAIB LONG	(32,202)
FAIL TO RECEIVE VS. UNALLOCATED / BREAK	-
CNS FAIL TO RECEIVE VS. FIRM LONG	(188,651)
CNS FAIL TO RECEIVE VS. NONCUSTOMER LONG	(261,631)
CNS FAIL TO RECEIVE VS. PAIB LONG	-
CNS FAIL TO RECEIVE ADJUSTMENT	-
CNS FAIL TO RECEIVE VS. STOCK BORROW	-
CNS FAIL TO RECEIVE VS. STOCK BORROW PLEDGE Q.	-
CNS FAIL TO RECEIVE VS. STOCK BORROW PLEDGE NQ	-
CNS FAIL TO RECEIVE VS. STOCK BORROW L/C	-
CNS FAIL TO RECEIVE VS. REVERSE REPO	-
CNS FAIL TO RECEIVE VS. FAIL TO DELIVER	(43,190)
TOTAL CUSTOMER FAIL TO RECEIVE	940,794
5. FIRM SHORT VS CUSTOMER LONG:	
TOTAL FIRM SHORT	-
FIRM OMNI SHORT	-
FIRM SHORT VS. CUSTOMER LONG	1,107,602
NONCUSTOMER SHORT VS. CUSTOMER LONG	1,138,722
REPO VS. CUSTOMER LONG	42,557
PAIB SHORT VS. CUSTOMER LONG	121,497
REPO VS. UNALLOCATED	-
FIRM SHORT VS. UNALLOCATED	-
NONCUSTOMER SHORT VS. UNALLOCATED	-
TOTAL FIRM SHORT VS. CUSTOMER LONG	2,410,378
6. CUSTOMER DIVIDEND & INTEREST:	
DIVIDEND & INT PAYABLES	106,733
ADJUSTMENTS FROM DIVIDEND DEPT.	(3,465)
TOTAL CUSTOMER DIVIDENDS & INTEREST	103,268
7. SECURITY COUNT DIFFERENCE > 7 DAYS:	
8. SUSPENSE ACCOUNTS	
SUSPENSE CREDITS & SMV:	-
CUSTOMER UNAPPLIED 090-01234	7,364
ABANDONED PROPERTY / SOFT DOLLARS / COMM. REBATES	85,319
TOTAL SUSPENSE ACCOUNTS	92,683
9. AGED TRANSFERS & REORGANIZATION:	
TRANSFER SHORTS OVER 40 DAYS	-
REORG/REDEMPTION SMV OVER 7 DAYS	-
TOTAL AGED TRANSFERS & REORGANIZATION	-
10. OTHER:	
OTHER CREDITS	-
TOTAL OTHER	-
TOTAL CREDITS	3,292,199

15c3-3 CUSTOMER RESERVE COMPUTATION

BROKER DEALER UNIT

10/17/08

(in 000'S)

	10/17/08
12. CUSTOMER DEBITS:	
CUSTOMER SECURITY ACCOUNTS	5,175,050
CUSTOMER NETTING LBI (incl. 941-20159 & 941-20160)	(59,829)
CUSTOMER NETTING NB	-
MONEY CONTROL ADJUSTMENT	-
CUSTOMER ADJUSTMENT (VARIOUS and LBHI Debits)	(2,470,958)
CUSTOMER ADJUSTMENTS VS. ADP OMNI (097-00084)	-
BOOKKEEPING ADJUSTMENTS	-
INV ADVISORY FEES RELATED TO NB MARGIN DEBITS	-
MONEY FUND RECEIVABLE	-
MARGIN INTEREST	-
UNSECURED DEBITS	(40,984)
PARTLY SECURED DEBITS	(6,625)
NON-PURPOSE LOANS	-
RULE 144 UNSECURED DEBITS	-
SECURITY CONCENTRATION	-
TOTAL CUSTOMER DEBITS	2,596,654
13. CUSTOMER STOCK BORROW:	
STOCK BORROW	215,175
STOCK BORROW MTM	-
STOCK BORROW L.O.C.	-
STOCK BORROW VS. CUST SHORT ADJ.	-
STOCK BORROW FREE OF MONEY	-
STOCK BORROW LC VS SECURED BK LOAN	-
STOCK BORROW L/C VS. CUSTOMER SHORT	-
STOCK BORROW NQ VS. CUSTOMER SHORT	-
STOCK BORROW L/C VS. FIRM BANK LOAN	-
STOCK BORROW NQ VS. FIRM BANK LOAN	-
STOCK BORROW VS STOCK LOAN	(86,631)
STOCK BORROW VS. STOCK LOAN PLEDGE	-
STOCK BORROW PLEDGE Q VS. STOCK LOAN	-
STOCK BORROW PLEDGE NQ VS. STOCK LOAN	-
STOCK BORROW PLEDGE Q. VS. STOCK LOAN PLEDGE	-
STOCK BORROW PLEDGE NQ VS. STOCK LOAN PLEDGE	-
STOCK BORROW L/C VS. STOCK LOAN	-
STOCK BORROW L/C VS. STOCK LOAN PLEDGE	-
STOCK BORROW L/C VS. FIRM SHORT	-
STOCK BORROW L/C VS. NONCUSTOMER SHORT	-
STOCK BORROW VS. FIRM SHORT	-
STOCK BORROW VS. NONCUSTOMER SHORT	(67)
STOCK BORROW PLEDGE Q. VS FIRM SHORT	-
STOCK BORROW PLEDGE Q. VS. NONCUSTOMER SHORT	-
STOCK BORROW PLEDGE NQ VS. FIRM SHORT	-
STOCK BORROW PLEDGE NQ VS. NONCUSTOMER SHORT	-
STOCK BORROW VS. THE BOX	-
STOCK BORROW PLEDGE Q. VS. THE BOX	-
STOCK BORROW PLEDGE NQ VS. THE BOX	-
STOCK BORROW L/C VS. THE BOX	-
STOCK BORROW VS. FAIL REC CNS	-
STOCK BORROW PLEDGE Q. VS. F/R CNS	-
STOCK BORROW PLEDGE NQ VS. F/R CNS	-
STOCK BORROW L/C VS. F/R CNS	-
STOCK BORROW L/C VS. REPO	-
STOCK BORROW VS. REPO	-
STOCK BORROW PLEDGE Q. VS. REPO	-
STOCK BORROW PLEDGE NQ VS. REPO	-
STOCK BORROW VS. UNALLOCATED	-
STOCK BORROW PLEDGE Q. VS. UNALLOCATED	-
STOCK BORROW PLEDGE NQ VS. UNALLOCATED	-
STOCK BORROW L/C VS. UNALLOCATED	-
STOCK BORROW VS. PAIB SHORT	-
STOCK BORROW PLEDGE Q. VS. PAIB SHORT	-
STOCK BORROW PLEDGE NQ VS. PAIB SHORT	-
STOCK BORROW L/C VS. PAIB SHORT	-
STOCK BORROW L/C VS. FAIL TO RECEIVE	-
STOCK BORROW VS. FAIL TO RECEIVE	-
STOCK BORROW PLEDGE Q. VS. FAIL TO RECEIVE	-
STOCK BORROW PLEDGE NQ VS. FAIL TO RECEIVE	-
TOTAL CUSTOMER STOCK BORROW	128,477

15c3-3 CUSTOMER RESERVE COMPUTATION

BROKER DEALER UNIT

10/17/08

(in 000'S)

	10/17/08
14. CUSTOMER FAIL TO DELIVER:	
FAIL TO DELIVER	9,035,807
CNS FAIL TO DELIVER	1,235,456
MISC FAIL TO DELIVER ADJUSTMENTS	-
OMNI FAIL TO DELIVER ADJUSTMENTS	-
FAIL TO DELIVER MTM ADJUSTMENT	-
FAIL TO DELIVER ADJUSTMENT	-
FAIL TO DELIVER VS. FAIL TO RECEIVE	(142,663)
FAIL TO DELIVER VS. FAIL TO RECEIVE CNS	(43,190)
FAIL TO DELIVER OVER 30 DAYS	(826)
FAIL TO DELIVER VS. FIRM SHORT	(2,782,459)
FAIL TO DELIVER VS. PAIB SHORT	(305,516)
FAIL TO DELIVER VS. REPO	-
FAIL TO DELIVER VS. THE BOX	(876,298)
FAIL TO DELIVER VS. NON-CUSTOMER SHORT	(4,236,780)
FAIL TO DELIVER VS. UNALLOCATED/ BREAK	-
CNS FAIL TO DELIVER VS. FIRM SHORT	(685,534)
CNS FAIL TO DELIVER VS. NONCUSTOMER SHORT	(398,515)
CNS FAIL TO DELIVER VS. PAIB SHORT	(5,057)
CNS FAIL TO DELIVER VS. THE BOX	(61,244)
CNS FAIL TO DELIVER VS. REPO	-
CNS FAIL TO DELIVER VS. CUSTOMER BANK LOAN	-
CNS FAIL TO DELIVER VS. UNALLOC/BREAK	-
CNS FAIL TO DELIVER VS. FAIL TO RECEIVE	(63,345)
TOTAL CUSTOMER FAIL TO DELIVER	669,836
15. CUSTOMER MARGIN WITH OCC	
OCC MARGIN	-
OCC PROPRIETARY QUALIFIED COLLATERAL	518,516
OCC COMMINGLED MARGIN (CUST. BANK LOAN)	-
TOTAL CUSTOMER MARGIN WITH OCC	518,516
16. OTHER	
OTHER CUSTOMER DEBITS	-
TOTAL OTHER	-
17. AGGREGATE DEBIT ITEMS	3,913,483
18. LESS 3%	(117,404)
19. TOTAL 15C3-3 DEBITS	3,796,079
20. EXCESS - DEBITS OVER CREDITS	503,880
21. DEFICIT - CREDITS OVER DEBITS	

LEHMAN BROTHERS INC.
RULE 15c3-3 RESERVE FORMULA
(000'S)

10/17/08

CUSTOMER CREDITS:

<i>Customer Accounts</i>	11,740,089
<i>Securities Related Intercompany Payables</i>	188,875
<i>ITS Unsecured Shorts</i>	63,952
<i>Non Commodity Reg</i>	0
<i>Commodity Overdrafts</i>	0
<i>Bank Overdrafts</i>	0
<i>Tefra Withholdings</i>	0
<i>Aged Checks</i>	0
<i>Subtotal</i>	<u>11,992,916</u>

<i>CUSTOMER STOCK LOAN</i>	0
<i>CUSTOMER FAIL TO RECEIVE</i>	4,333,585
<i>CUSTOMER BANK LOAN (OCC MARGIN)</i>	0
<i>CUSTOMER BANK LOAN (ITS-REPO)</i>	1,641,261
<i>FIRM SHORT VS. CUSTOMER LONG</i>	20,834
<i>SUSPENSE CREDITS</i>	0

TOTAL CREDITS	<u>17,988,596</u>
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CUSTOMER DEBITS:

<i>Customer Accounts</i>	10,357,279
<i>OMNI Rec Formula</i>	0
<i>Philadelphia Options Cust. Receivables</i>	0
<i>Subtotal</i>	<u>10,357,279</u>

CUSTOMER MARGIN WITH OCC	0
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<i>CUSTOMER STOCK BORROW</i>	1,193,138
<i>CUSTOMER FAIL TO DELIVER</i>	5,917,103
<i>AGGREGATE DEBITS</i>	<u>17,467,520</u>
<i>Less 3%</i>	524,026
TOTAL DEBITS	<u>16,943,494</u>

EXCESS CREDITS OVER DEBITS	<u>1,045,102</u>
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SUMMARY: EXCESS OF TOTAL CREDITS OVER TOTAL DEBITS

10/17/08

CREDITS

#47	(17) CUST F/D VS (04) PROPRIETARY SHORT	0	0
#48	(19) B/D LONG VS (04) PROPRIETARY SHORT	0	0
#49	(21) OPERATIONAL VS (04) PROPRIETARY SHORT	0	0
#50	(23) INACT. LONG (04) PROP. SHORT	0	0
#62	(15) CUST LONG F/D (6) REPO	0	0
#63	(19) BR/Dealer Long Free vs (6) Repos	0	0
#65	(21) OPER. ACCTS (6) REPOS	0	0
#64	(15) CUST. LONG F/D VS (6) REPO	0	0
#79	(21) OPER. ACCTS (8) HIC REPO	0	0
#80	(23)INACT. LONG VS (8) HIC REPO	0	0
#92	(17) CUST LONG F/D VS (10) TRI PARTY REPO	0	0
#94	(21) OPERATIONAL VS (10) TRI PARTY R.	0	0
#95	(23) INACTIVE LONG (10) TRIPARTY REPO	0	0
#91	(15) CUST LONG F/D VS TRI PARTY REPO	0	0
#98	(29) AFFILIATE LONG VS (10) TRI PARTY REPO	0	0
#134	(11) NONCUST/F/D-30 VS (16) PLEDGED VS BOR.	0	0
#137	(17) CUST Long Free VS (16) PLEDGE Vbor	0	0
#139	(21) OPERATIONAL VS (16) PLEDGED VS BOR.	0	0
#140	(23) INACT. LONG VS (16) PLEDGE VS BOR.	0	0
#147	(11) NON CUST F/D - 30 DAYS VS (18) NON CUST F/R	63,975,543	63,976
#150	(17) CUST LONG F VS (18) NON CUST (F/R)	0	0
#151	(19) B/R DEALER LONG FREE VS (18) NON CUST (F/R)	0	0
#152	(21) OPER. ACCTS. VS (18) NON CUST (F/R)	0	0
#153	(23) INACTIVE LONG VS (18) NON CUST F/R	0	0
#163	(17) CUST LONG F VS (20) NET SHORT CLR	0	0
#166	(23) Inact Long VS (20) NET CLEARING	0	0
#176	(11) NON CUST/F/D-30 VS (22) CUST SHRT(F/R)	210,909,229	210,909
#194	(15) CUST LONG (24) OPER SHRT	0	0
#179	(19) Customer Long Free VS (22)CUST SHORT(F/R)	22,833,440	22,833
#180	(19) BR/DEALER LONG VS (22) CUST SHORT	0	0
#181	(21) OPERATIONAL VS (22)CUST SHORT(F/R)	0	0
#182	(23) INACTIVE LONG VS (22)CUST SHORT(F/R)	0	0
#192	(11)NONCUST FD V S (24)OPER SHORT	0	0
#197	(21) OPER ACCTS LNG VS (24) OPER SHRT	0	0
#198	(23) INACT. LONG VS (24) OPER SHRT	2,786,170	2,786
#208	(9) NON CST F/D-30 VS (26) AFFILIATE SHRT	0	0
#191	(15) NON-CUST F/D VS (24) OPER SHORT	0	0
#211	(17) CUST. LONG VS (26) AFFIL SHORT	0	0
#212	(19) BD LONG VS (26)AFFILIATE SHORT	0	0
#213	(21) OPER ACCCTS LONG VS (26)AFFILIATE SHORT	0	0
#214	(23) INACTIVE LONG VS (26)AFFILIATE SHORT	0	0
#218	(31) AFFILIATE LONG VS (26)AFFILIATE SHORT	0	0
#283	(33) BOX BREAKS VS (26)AFFILIATE SHORT	0	0
#284	(33) BOX BREAKS VS (24) OPERATIONAL SHORT	96,766,940	96,767
#285	(33) BOX BREAKS VS (22)CUST SHRT(F/R)	154,518	155
#285C	(33) BOX BREAKS VS (22)CUST SHRT(F/R)	0	0
#286	(33) BOX BREAKS VS (20)CUST NET CL	0	0
#287	(33) BOX BREAK (18) F/R	85,318,494	85,318
#288C	(33) BOX BREAKS LONG VS (16) PLEDGE VS BOR.	0	0
#288	(33) BOX BREAKS LONG VS (16) PLEDGE VS BOR.	0	0
#290	(33) BOX BREAKS VS (12) BANK LOAN FIRM	0	0
#291	(33) BOX BREAKS VS (10) TRI PARTY REPO	0	0
#292	(33) BOX BREAKS VS (06) HIC REPOS	0	0
#293	(33) BOX BREAKS VS (06) REPO	492,203	492
#293C	(33) BOX BREAKS VS (06) REPO	0	0
#294	(33) BOX BREAKS VS (04)PROPRIETARY SHORT	67,975,310	67,975
#294C	(33) BOX BREAKS VS (04)PROPRIETARY SHORT	0	0
#339	(13) NET LONG CLE(38) INACTIVE SHORT	0	0
#341	(17) CUST LONG FREE VS (38)INACTIVE SHRT	742,530	743
#342	(19) BR/DEALER LONG FREE VS (38)INACTIVE SHRT	0	0
#343	(21) OPER. ACCTS (19) VS (38)INACTIVE SHRT	1,683,335	1,683
#344	(23) INACTIVE LONG (19) VS (38)INACTIVE SHRT	25,631,684	25,632
#346	(27) NON-BROKER DEALER (19) VS (38)INACTIVE SHRT	0	0
#347	(27) AFFIL LGFREE(19) VS (38)INACTIVE SHRT	0	0
#348	(31) OPER LONG F (38) INACT. SHORT	0	0
#349	(33) BOX BREAKS(19) VS (38)INACTIVE SHRT	25,619,610	25,620
#337	(9) NON CUST F/D (38) INACTIVE SHORT	0	0
#386	(5) BVP VS (46) SPECIAL FINANCE	0	0
#392	(17)CUST LONG FREE VS (46)SPECIAL FINANCE	512,909	513
#393	(19)BR/DEALER LONG FREE VS (46)SPECIAL FINANCE	0	0
#395	(23) INACT. LONG (46) SPEC. FINANCE	1,674,846	1,675
#398	(29) CUST. LONG F VS (01)SPECIAL FIN.	0	0
#400	(33) BOX BREAK LONG (46) SPECIAL FIN.	0	0
#419	(33)BOX BREAKS LAW (48) FIN LDGR TRF.	0	0
#433	(35) SPEC FIN CUST LONG VS (26) AFFIL SHORT	0	0
#438	(35)SPEC FIN CUST SHT VS (38) INACTIVE SHORT	1,930,788	1,931
#443	(37) FIN. LDGR TR VS (8) HIC REPOS	0	0
	PARTLY SECURED CHARGE	1,049,177 A	1,049
	STOCK RECORD BREAK	0 B	0
	ACCOUNTS PAYABLE	1,106,920,412 R-2	1,106,920
	SCS CASH	206,409 R-2	206
	OPTION MARGIN	13,210,277 R-2	13,210
MONE	BANK OVERDRAFTS	0 R-3	0
ONLY	SUSPENSE / BANK REC. DIFFERENCES	20,378,322 R-4	20,378
	OPERATIONAL / UNAPPLIED CASH	17,105,648 R-3	17,106
	P&I PAYABLES CANADA	0 R-5	0
	P&I PAYABLES	1,534,483,498 376,662,430 R-5	376,662
	LESS 3% OF AGGREGATE DEBIT ITEMS #REF!	1,832,445,830	1,832,446
DEBIT			0
#223	(9) NON CUST F/D VS (28) TRANSFER	0	0
#226	(15) CUST F/D VS (28) TRANSFER	0	0
#239	(9) NON CUST F/D VS (30) TRANSIT	0	0
#242	(15) CUST F/D VS (30) TRANSIT	0	0
#258	(15) CUST F/D VS (32) SAFEKEEPING	0	0
#267	(9) NON CUST F/D VS (34) BOX	0	0
#267c	(9) NON CUST F/D VS (34) BOX	0	0
#269	(13) NET LONG CLE VS (34) BOX	0	0
#270C	(15) CUST F/D VS (34) BOX	0	0
#270	(15) CUST VS (34) BOX	0	0
#337	(15) CUST F/D VS (36) BOX - LBSI	0	0
			0
	EXCESS OF TOTAL CREDITS OVER TOTAL DEBITS	3,976,986,052	3,976,986

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10/17/08

(in 000'S)

	10/17/08
1. P.A.I.B. CREDITS:	
PAIB CREDITS	2,285,408
BREAK VS. PAIB LONG	-
PAIB CREDIT ADJ	(8,000)
PAIB DEFERRED COMMISSIONS AND IA FEES	20,004
PAIB LONG VS CUSTOMER SHORT	5,330
FIRM LONG vs PAIB SHORT	(220,498)
NONCUST LONG VS. PAIB SHORT	(155,633)
UNALLOCATED PAIB SHORT	-
PAIB SHORT VS CUSTOMER LONG	(121,497)
P.A.I.B. CREDITS:	1,805,113
2. PAIB BANK LOAN:	
OCC MARGIN	-
OCC MARGIN DEFECIT	-
PAIB LONG VS. FIRM BANK LOAN	-
PAIB LONG VS. CUST BANK LOAN	-
PAIB LONG VS. PAIB BANK LOAN	-
PAIB BANK LOAN - PAIB NOT LONG	-
CUST BANK LOAN- CUSTOMER NOT LONG	-
FIRM BANK LOAN- CUSTOMER NOT LONG	-
TOTAL P.A.I.B. BANK LOAN	-
3. PAIB STOCK LOAN:	
STOCK LOAN VS PAIB LONG	-
STOCK LN PLDG VS. PAIB LONG	-
TOTAL CUSTOMER STOCK LOAN	-
4. PAIB FAIL TO RECEIVE:	
FAIL TO RECEIVE VS PAIB LONG	32,202
CNS FAIL TO RECEIVE VS PAIB LONG	-
TOTAL P.A.I.B. FAIL TO RECEIVE	32,202
5. FIRM SHORT VS PAIB LONG:	
REPO VS PAIB LONG	-
NONCUST SHORT VS. PAIB LONG	346,571
FIRM SHORT VS PAIB LONG	174,533
TOTAL FIRM SHORT VS P.A.I.B. LONG	521,104
6. PAIB DIVIDEND & INTEREST:	
STOCK DIVIDENDS > 30 DAYS	-
MONEY CONTROL ADJUSTMENT	-
DIVIDEND & INT PAYABLES > 7 DAYS	-

TOTAL P.A.I.B. DIVIDENDS & INTEREST

-

08-13555-mg Doc 10271-4

Filed 07/16/10

Entered 07/16/10 19:59:23

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7. SECURITY COUNT DIFFERENCE > 7 DAYS

through P to Declaration

Pg 243 of 245

8. SUSPENSE CREDITS & SMV >7 DAYS:

-

9. AGED TRANSFERS & REORGANIZATION:

TRANSFER SHORTS OVER 40 DAYS

-

REORG/REDEMPTION SMV OVER 7 DAYS

-

TOTAL AGED TRANSFERS & REORGANIZATION

-

10. OTHER:

OTHER CREDITS

-

TOTAL OTHER

-

TOTAL PAIB CREDITS

2,358,419

CUSTOMER SECURITY ACCOUNTS	2,014,272
VARIOUS PAIB DEBIT ADJ	(176,570)
UNSECURED DEBITS	-
PARTLY SECURED DEBITS	-
RULE 144 UNSECURED DEBITS	-
SECURITY CONCENTRATION	-
BREAK VS CUSTOMER LONG	-
	<hr/>
P.A.I.B. DEBITS:	1,837,702

13. PAIB STOCK BORROW:

STOCK BORROW VS PAIB SHORT	-
STOCK BORROW Q. VS. PAIB SHORT	-
STOCK BORROW NQ VS. PAIB SHORT	-
STOCK BORROW L/C VS PAIB SHORT	-
	<hr/>
TOTAL P.A.I.B. STOCK BORROW	-

14. PAIB FAIL TO DELIVER:

FAIL TO DELIVER OVER 30 DAYS	-
FAIL TO DELIVER VS PAIB SHORT	305,516
CNS FAIL TO DELIVER VS PAIB SHORT	5,057
CNS FAIL TO DELIVER VS THE BOX	-
CNS FAIL TO DELIVER VS REPO	-
CNS FAIL TO DELIVER VS UNALLOC./BREAK	-
CNS FAIL TO DELIVER VS FAIL TO RECEIVE	-
	<hr/>
TOTAL P.A.I.B. FAIL TO DELIVER	310,573

15. PAIB MARGIN WITH OCC

OCC MARGIN	-
CUSTOMER LONG SEG VS. CUST. BANK LOAN	-
OCC COMMINGLED MARGIN (CUST. BANK LOAN)	-
	<hr/>
TOTAL P.A.I.B. MARGIN WITH OCC	-

16. OTHER

OTHER PAIB DEBITS	-
	<hr/>
TOTAL OTHER	-

17. TOTAL PAIB DEBITS 2,148,275

20. EXCESS - DEBITS OVER CREDITS -

21. DEFICIT - CREDITS OVER DEBITS 210,144

	09/12/06	09/05/08	08/29/08	08/22/08	08/15/08	Doc 107-1-1	08/08/08	07/31/08	Filed 07/25/08	07/16/10	Entered 07/16/10	07/11/06	07/11/08	06/30/08	06/23/08	06/20/08	06/13/08	06/06/08	5/30/2008	5/23/2008	5/16/2008	3 Month Average
08-13555-mg Doc 107-1-1 Filed 07/16/10 Entered 07/16/10 19:59:23 Exhibits M																						
through P to Declaration Pg 245 of 245																						
MTS																						
Accounts Payable	20,440	20,440	14,966	21,456	47,357	19,040	14,966	21,456	47,357	23,189	23,189	18,475	22,937	127,725	38,746	41,237	34,268	25,993	31,115			
SCS Cash	149,163	243,640	157,911	168,658	529,301	528,553	579,997	521,464	426,060	457,567	466,527	402,880	362,170	322,362	310,236	288,845	356,923	488,695	717,160	393,585		
Options Margin	39,800	56,002	59,461	59,978	72,454	84,520	73,758	75,134	65,807	60,460	60,460	80,169	81,035	96,128	60,844	26,542	16,396	49,951	63,353			
P & I	9,004	9,004	8,800	11,901	95,582	13,411	16,762	39,598	15,397	20,086	33,194	17,816	47,023	9,969	10,377	18,006	13,398	13,530	30,521	22,809		
S/R Breaks	1,340	3,988	4,121	3,850	3,791	2,452	2,610	10,011	2,452	1,979	24,387	2,759	2,437	6,652	5,970	6,570	6,155	6,199	9,538	(65)		
	-	-	-	(1,234)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-		
Overdrafts	156,260	6,106	170,082	18,584	0	1	5,753	26	2,816	195,896	45,133	106	6,839	7,936	17,075	644	1,811	3,662	1,937	33,719		
Unapplied Cash / Suspense	22,565	5,500	481	2,036	28,189	23,717	503,703	1,263	2,109	10,431	36,254	13,364	12,897	30,116	10,750	12,717	28,402	2,065	45,935			
% ADI	13,090	13,940	41,563	24,194	64,673	50,388	34,136	131,489	77,861	63,330	30,258	117,875	69,577	43,622	89,012	24,189	70,880	38,884	54,930	55,466		
3% ADI	45,785	15,599	108,534	22,976	25,040	10,258	15,787	17,852	21,609	24,814	14,718	133,560	39,406	19,255	25,338	14,243	25,238	38,189	64,847	35,950		
Sub-total	457,447	374,219	565,919	332,399	866,386	732,339	1,245,661	815,385	693,655	884,411	722,344	821,113	639,575	527,589	709,452	462,919	663,715	668,604	953,603	691,407		
ADP																						
Free Credits / Margin	2,140,440	2,937,601	2,619,903	2,865,742	3,106,303	3,133,182	3,222,251	2,543,047	2,661,771	3,122,151	3,112,121	4,217,985	3,809,015	2,547,585	5,202,633	2,334,570	1,739,727	1,719,727	1,270,152	2,858,182		
New Customer Financing	1,201,745	(1,204,038)	(141,281)	(1,248,725)	(985,271)	(1,010,434)	(1,085,527)	(1,175,416)	(929,743)	(507,346)	(1,383,862)	(1,383,327)	(928,204)	(1,363,736)	(1,326,850)	(1,336,779)	(1,416,599)	(1,236,340)	(1,014,510)	(972,434)		
O/M/I Conversion Payable	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-		
O/Drafts	70,244	52,177	41,114	24,809	35,540	22,744	44,223	38,844	36,824	51,609	56,361	54,577	47,145	40,337	87,613	78,943	66,879	53,947	52,338	50,330		
Dividends	5,034	15,944	16,910	16,536	14,552	15,243	15,172	16,628	19,340	20,592	19,118	18,088	18,117	19,178	21,102	10,882	11,599	14,250	9,929	15,695		
S/B L.O.C.	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-		
S/B NO	5,871	4,230	4,965	4,281	7,866	3,035	7,247	4,883	11,242	-	-	91	38	42,842	35,419	46,932	29,142	60,799	14,152			
Non-Broker Dealer Affil.	183,000	284,964	203,674	207,715	244,457	212,728	188,950	157,428	149,220	141,218	161,083	93,327	91,138	58,654	92,679	87,331	95,928	93,186	98,002	149,720		
OCC Commingled Margin/Defecit	(657,782)	(621,700)	(369,709)	(606,125)	(698,598)	(694,808)	(209,780)	(719,534)	(726,972)	(874,848)	(876,238)	(936,432)	(937,765)	(1,384,252)	(1,404,383)	(1,042,676)	(910,359)	(1,091,056)	(1,040,435)	(831,762)		
Firm Bank Loan - Firm Not Long	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-		
Suspense	8,093	5,442	2,926	12,501	8,273	4,461	31,927	43,235	36,014	36,894	13,288	23,003	9,425	6,121	6,304	2,028	3,265	14,302	2,364	14,203		
Unapplied Cash	13,064	6,799	12,371	7,121	6,035	10,722	4,678	8,177	4,888	9,731	5,312	6,037	4,348	5,168	4,767	45,140	8,642	9,137	11,065	9,642		
Abandoned Property / Soft Dollars	85,212	85,212	85,212	85,212	85,212	85,212	81,304	81,304	81,304	81,304	81,304	80,649	80,649	80,649	76,104	76,104	76,104	76,104	76,104	81,066		
Other	58,853	17,666	12,930	8,362	26,217	20,389	(4,118)	9,549	28,200	32,991	15,623	10,881	10,684	38,485	30,000	25,367	36,208	8,960	38,017	22,382		
3% ADI	138,123	101,775	95,467	106,570	110,190	117,908	103,250	130,953	127,682	129,052	128,649	127,990	135,892	147,072	169,688	158,683	153,357	164,958	179,066	132,964		
Sub-total	3,251,896	1,686,073	2,584,481	1,483,999	1,960,776	1,920,383	2,399,578	1,139,097	1,499,770	2,243,349	1,332,760	2,312,777	2,340,514	195,299	3,002,498	475,011	(88,317)	(144,133)	(257,109)	1,544,142		
ITS																						
Free Credits (primarily SCS cash)	587,444	1,008,942	1,067,193	957,419	1,219,824	1,062,229	910,429	1,026,967	888,261	1,053,263	1,282,741	1,266,344	1,398,987	1,212,444	1,168,096	1,353,271	2,610,267	1,654,514	1,729,414	1,234,634		
Unsecured Shorts	61,870	61,183	58,943	59,509	59,509	58,996	58,996	58,996	58,996	58,996	61,505	59,285	59,329	59,329	59,329	67,559	65,791	58,974	60,336			
Poss & Control	189,066	181,077	190,060	83,868	81,348	170,220	191,183	118,709	130,872	147,618	133,300	85,668	110,902	100,809	102,554	99,353	90,833	146,461	182,018	133,470		
Other	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-		
3% ADI	44,913	17,872	16,341	20,000	21,109	25,208	21,265	11,135	24,671	26,046	23,375	29,794	25,141	24,672	29,557	29,386	25,676	19,291	26,523	24,315		
Sub-total	883,313	1,269,074	1,332,537	1,120,796	1,381,790	1,316,653	1,181,872	1,215,807	1,102,801	1,285,893	1,500,921	1,441,090	1,594,358	1,397,254	1,359,535	1,541,339	2,794,335	1,886,058	1,996,929	1,452,756		
Commodities																						
O/Drafts	13,779	28,144	136,100	92,598	87,729	73,040	28,669	23,019	94,522	34,544	25,845	19,479	45,291	73,086	112,491	31,423	35,861	71,279	12,935	54,728		
Other	1,317,364	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	176,986	532,347	106,668		
Sub-total	1,331,143	28,144	136,100	92,598	87,729	73,040	28,669	23,019	94,522	34,544	25,845	19,479	45,291	73,086	112,491	31,423	212,847	603,626	12,935	161,396		
Requirement	5,923,799	3,357,511	4,619,038	3,029,791	4,296,681	4,042,415	4,855,780	3,193,308	3,390,747	4,448,197	3,581,870	4,594,459	4,619,738	2,193,228	5,183,976	2,510,692	3,582,580	3,014,156	2,706,359	3,849,701		
Cushion (plus 2% deduction)	369,449	313,489	338,962	307,209	332,317	327,585	343,220	310,692	314,253	335,803	318,130	358,541	358,262	310,772	316,308	338,420	326,844	320,641	331,854			
Amount Segregated	6,293,248	3,671,000	4,958,000	3,337,000	4,628,998	4,370,000	5,199,000	3,504,000	3,705,000	4,784,000	3,900,000	4,953,000	4,978,000	2,504,000	5,554,000	2,827,000	3,921,000	3,341,000	3,027,000	4,181,855		